

THE LINGNAN INSTITUTE OF BUSINESS ADMINISTRATION
THE CHINESE UNIVERSITY OF HONG KONG

WORKMEN'S COMPENSATION — A STUDY ON
SELECTED INDUSTRIES IN HONG KONG

by

NG, Shu-sing

A THESIS SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENT FOR THE DEGREE OF
MASTER OF BUSINESS ADMINISTRATION (M.B.A.)

THESIS COMMITTEE

Dr. HSIN SUTU

Mr. LEE JUN CHUNG

Prof. S.C. LOH

Prof. BI-LI YANG

(NATIONAL CHENG-CHI
UNIVERSITY)

Shen

71D

7816

11645*

1015410



WORKMEN'S COMPENSATION — A STUDY ON
SELECTED INDUSTRIES IN HONG KONG

BY

SHU SING NG

PREFACE

The rapid development of Hong Kong's industry leads to many labor problems. The major ones are industrial accidents, strikes etc. The productivity of labor will increase only if these problems can be solved or minimized in one way or another. The author has singled out workmen's compensation for the study. Numerous publications have been written on this subject, but none has given special references to the workmen's compensation system adopted in Hong Kong. It is, therefore, the author's intention to review the present system, and hope this paper will be of value to those who concern with this matter.

This paper consists of four chapters. Chapter I is an introduction and a brief description of the development of Hong Kong's industry. The author explains, in the last paragraphs, the reasons and research methodology of the study. Chapter II gives a brief outlook of the system used before 1970. Chapter III describes the present system used in Hong Kong. Chapter IV evaluates this system and recommendations are suggested for future improvements.

It is very difficult to carry out research in Hong Kong due to the difficulties in obtaining primary data. Therefore, this study had perforce to be based entirely on information gathered from a small sample which responded favorably.

The completion of this study depended upon many people, The author is greatly indebted to Mr. Lee Jun Chung, head of the Department of Business Administration, New Asia College, the Chinese University of Hong Kong and Dr. H. Sutu, Associate Director of the Lingnan Institute of Business Administration, the Chinese University of Hong Kong. Without their constant help and guidance, this study could not have been accomplished. I am very grateful to those co-operating companies, the various relevant Government Departments and Mr. T.C. Chan of American International Underwriters Ltd., without whose kind assistance, I would have lacked of encouragement. Thanks should also be given to some of the author's classmates and intimate friends who helped with typing and in the collection of materials. Finally, it is only the author who is responsible for any errors appearing in this text.

Shu Sing Ng

Hong Kong

April, 1970.

TABLE OF CONTENTS

PREFACE	i
LIST OF TABLES	iv
LIST OF ILLUSTRATION	vi
CHAPTERS	
I. INTRODUCTION	1
The Development of Hong Kong Industry Social and Cultural Background Objective, Scope and Research Methodo- logic and Limitations of the Study	
II. DEVELOPMENT OF WORKMEN'S COMPENSATION IN HONG KONG	23
Terminology Underlying Principle Employment and Industrial Accidents The Workmen's Compensation System before 1970	
III. THE PRESENT WORKMEN'S COMPENSATION SYSTEM	56
Workmen's Compensation Ordinance Chapter 282 Response to the Ordinance: From the Public as Reported in Local Newspapers From Selected Industries as Gathered From Sample Survey	
IV. EVALUATION AND RECOMMENDATION	80
Evaluation Recommendation	
APPENDIX	101
BIBLIOGRAPHY	122

LIST OF TABLES

Table	Page
I-1. External Trade Since 1947	6
I-2. Industrial & Occupational Injuries and Number of Persons Employed in Textile, Weaving Apparel & Leather Industries and Fabricated Metal Products, Machinery & Equipment in 1970	17
I-3. Persons Employed in Selected Registered or Recorded Industries in the Manufacture of Textile and Transport Equipment in 1970 .	18

Table	Page
II-1. Number of Employees in Registered and Recorded Industrial Undertakings	35
II-2. Number of Persons Employed in Textiles in- dustry, Cotton Spinning and Cotton Weav- ing, Shipbuilding and Repairing	38
II-3. Industrial and Occupational Accidents, 1949-1970	42
II-4. Amount of Compensation Involved in Indus- trial Accidents	43
II-5. Industrial and Occupational injuries in Selected Industries	45

LIST OF ILLUSTRATION

Graph	Page
I-1. The Graph of the Total Population of Hong Kong	8
II-1. Development of manufacturing industries 1947-1970	40
Chart	
I-1. The Nine Major Classification of Hong Kong Industries	13

CHAPTER I

INTRODUCTION

The development of workmen's compensation system is related to the development of industry. The industrialization of Hong Kong started shortly after the Second World War, at the end of the 1940's, while the first Ordinance was enacted a few years later in 1953. As industry continued to develop, the number of persons employed in industrial undertakings increased and the number of persons involved in industrial accidents increased too. Several amendments were made in order to cope with the needs that had arisen in the development of industry. It is the author's intention to make a short review on the development of Hong Kong industry, to look at the drastic changes since the Second World War.

The Development of Hong Kong Industry

Hong Kong emerges from the decade of the sixties, advancing forward at an increasing pace. It has risen to a place among the 25 leading trading countries in the world and, in terms of exports per capita, is placed ninth. The key factor in this development has been the growth and increasing sophistication of the manufacturing sector of the

economy.¹

Prior to the Second World War, Hong Kong was primarily an entrepot port connecting Southern China with the rest of the world. Industry which was of minor importance at that time, has now assumed an important role.

The Colony's first industries were in the nature of services related to the development of the port. The earliest was shipbuilding and repairing.² During the Japanese occupation of Hong Kong from December 1941 through August 1945, its economy came to a standstill. Factory rehabilitation, after almost four years of occupation, was rapid, due to the acute shortage of consumer goods throughout war-scarred South-East Asia.

In 1947, only 10 per cent of the Colony's total exports were actually made in Hong Kong and about 52,000 workers were known to earn a living in 972 industrial undertakings. Twenty-four years later, in 1970, the domestic exports alone topped \$12,347 million, more than four-fifths of the \$15,239 million worth of total exports. The number of people directly employed in 17,239 registered industrial

¹Hong Kong Government. Hong Kong Annual Report, 1969. (Hong Kong: Government Printer). p. 1.

²By the turn of the Century, as a natural adjunct of port activities, shipbuilding and repairing industries had developed. The first locally built vessel, the "Celestial" of 80 tons, was launched in 1843.

undertakings¹ had climbed to 589,505, adding in out-workers and workers in small unregistered factories, brought an estimated industrial labor force to 1,558,500, some 47 per cent of the total working population.

The development of the Hong Kong industry can roughly be divided into 3 stages. Each stage will be discussed individually as follows:

1. Embryonic Period (1947-1953). During this period, several hundred industrialists fled from Shanghai and other cities in China and established new industries in Hong Kong. Many of them had previously transferred some of their capital out of China. 1948, when the influx of refugees from China reached its peak, was a vital year for local industry. Most of the refugees brought capital and technical skills, both of which found ready employment in Hong Kong.

As China entered the Korean War, United Nations and the United States embargoed on trade in strategic commodities with Mainland China in March, 1951. This severely reduced Hong Kong entrepot trade. Local industrialists reacted quickly to the new situation, and despite difficulties in obtaining certain raw materials supplies and in

¹Registered industrial undertaking refers to industrial undertakings which are equipped with power-driven machinery or employed twenty or more manual workers, out-workers and persons employed in very small industrial concerns and home industries are not included.

marketing finished products, an increasing volume and range of Hong Kong products from many new industries began to flow out to world markets. The growing industry was able to gather up such of the "slack" caused by the recession in commerce. The factors favouring the development of industry were the existence of a stable government, free from social and political instability; the attraction of capital into the Colony; a deeply-rooted tradition of efficiency in such services as banking, shipping and insurance; a large merchant community with trading links all over the world; a sheltered, deep-water harbour; the existence of abundant, hard-working and adaptable labor force and an influx from mainland China of skilled workers and industrialists, some of them with considerable capital and knowledge of modern technique.

2. The Growing Period (1954-1960). The local industry continued to expand at a high and sustained rate and there was a general increase in external trade. The major products were cotton yarns and gray cotton piece-goods. Other important industries included plastic house-wares and toys, rubber footwear, flashlights, batteries, enamelware and tobacco products. During the 1950's, Hong Kong's textile manufacturers began to penetrate the British and United States markets for cotton yarns and gray cotton piece-goods. They were followed by the plastics molding manufacturers who concentrated on toys and plastic flowers. During this period several of the major textile companies

integrated forward by installing bleaching, finishing and dyeing facilities and by producing simple garments for export to the advanced countries. The availability of finished cloth enabled the formation of many new garment companies, producing a wide variety of clothing. In other words, this was a period of market penetration and development concentrated in a small number of industries especially textile industry.

3. Period of Diversification (1960-the present).

During this period, Hong Kong began to diversify to the new labor-intensive industries; these included a wide variety of electronic products, computer memories, watch cases and dials, scientific instruments and wigs. This diversification was partly initiated by foreign investors. In 1960, about one hundred United States, British and Japanese subsidiaries and joint ventures were formed in Hong Kong. These firms were important to Hong Kong's domestic exports. They employed about 8 per cent of Hong Kong's industrial laborforce and accounted for about 15 per cent of its domestic exports.

The connection between industry and exports is the most striking feature of Hong Kong's industrial economy. It is believed that 90 per cent of the output of manufacturing industry is exported. Table 1-1 shows broad trends in output as indicated by export values in the period 1947-1970.

TABLE 1-1
EXTERNAL TRADE SINCE 1947¹

\$ Million

Year	Exports	Re-exports	Total Export
1947	1,217		1,217
1948	1,583		1,583
1949	2,319		2,319
1950	3,715		3,715
1951	4,433	included in Exports	4,433
1952	2,899		2,899
1953	2,734		2,734
1954	2,417		2,417
1955	2,534		2,534
1956	3,210		3,210
1957	3,016		3,016
1958	2,989		2,989
1959	2,282	996	3,278
1960	2,867	1,070	3,938
1961	2,939	991	3,930
1962	3,318	1,070	4,387
1963	3,831	1,160	4,991
1964	4,428	1,356	5,784
1965	5,027	1,562	6,530
1966	5,730	1,833	7,563
1967	6,700	2,081	8,781
1968	8,428	2,142	10,570
1969	10,518	2,679	13,197
1970	12,347	2,892	15,239

¹Hong Kong Government. Hong Kong Statistics 1947-67. (Hong Kong: Government Printer, 1969), p.88.

Hong Kong Government. Hong Kong Annual Reports, 1968-70. (Hong Kong: Government Printer).

Social and Cultural Background

Population

The population of Hong Kong at the 1971 census was 3,950,000. About 98½ per cent are Chinese. The population, from about 600,000 at the end of Japanese occupation, grew rapidly and the 1961 census was 3,133,131 including 3,843 transients. The 1966 census showed the total population to be 3,716,400 including 3,787 transients.¹ The growth of population can be shown in Graph I-1.

The public attitude towards workmen's compensation

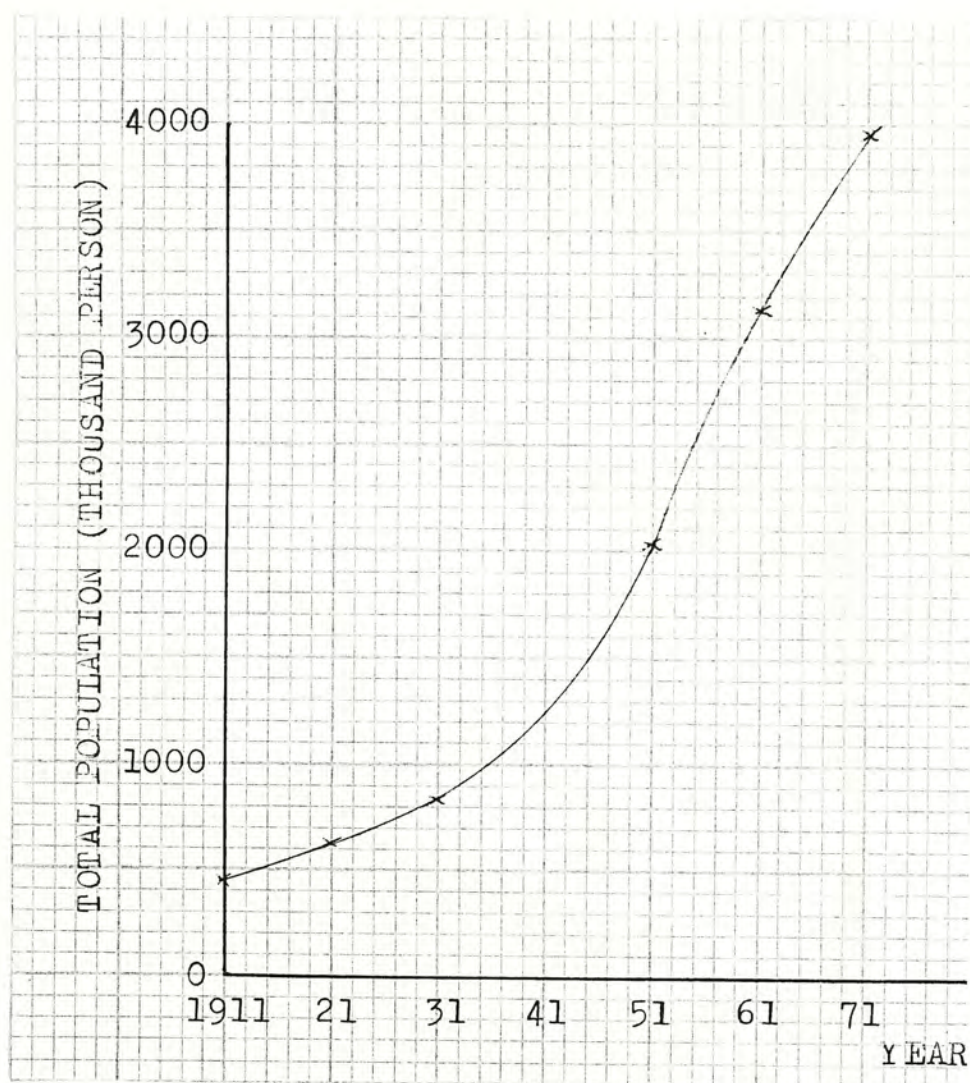
As the local population is mainly comprised of Chinese, it is important to take into consideration the Chinese attitude on workmen's compensation. Industrial accidents, in fact, any kind of accidents are regarded by the Chinese as the action of God. They are so polite in not claiming for compensation. On the contrary, they blame themselves for negligence or misfortune. Generally the injured workmen are well looked after while other members of the family or their relatives render necessary aid.

The importance of Workmen's Compensation Ordinance

Unfortunately, the above-mentioned protection for

¹Hong Kong Government. Hong Kong Annual Report, 1970. (Hong Kong: Government Printer), p. 217.

GRAPH I-1

THE GROWTH OF THE TOTAL POPULATION OF HONG KONG¹

¹Census & Statistics Department. Hong Kong Monthly Digest of Statistics. (Hong Kong: Government Printer), p.4.

injured workmen are not generally achieved and cases of unfulfilled need inevitably occur. It is more obvious in the over-crowded condition of urban life and under the pressures of an industrial economy such as pertained in Hong Kong. The weakening of the tradition Chinese family system is probably taking place now. In addition, the labor union is not strong enough to give any financial assistance to the injured workmen. These factors give rise to the problem of providing reliable protection to workers.

The Workmen's Compensation Ordinance helps to solve this problem. Most of the workers are protected by this Ordinance which gives workmen statutory right to claim for compensation from their employers when they are injured in the course of employment.

Objective, Scope and Research methodology and Limitations of the Study

Objective

The enactment of the Workmen's Compensation (Amendment) Ordinance No. 55 of 1969 aroused the attention of the author. He has worked for the American International Underwriters Ltd. for three months in the Summer of 1970. This gave him an opportunity to have a close look at the Ordinance. Thus it is his intention to review the Workmen's Compensation System in Hong Kong. The review is based on the attitudes of local industrialists and citizens towards this system and the systems of some other countries. It is hoped that the study can serve as an explanatory guideline for future improvement of the system.

Workmen's Compensation Ordinance was first enacted on December 1, 1953. Since then, only minor changes were made. Towards the end of 1969, the Ordinance was amended to provide wider coverage and greater benefits to workers. This amendment was similar to the first enactment of the Ordinance in that, the accidents reported doubled. This did not mean that the safety in industry deteriorated, but was the increase in protection for workers and might be a reflection of the general expansion of industrial activity in the Colony.

The objective of this study is to examine the

present workmen's compensation system of Hong Kong. It is hoped that, with references to the systems of some other countries, suggestions on the improvement of the system can be made. It is emphasized that this study is far from comprehensive. Its main objective is to give the readers some ideas on the present workmen's compensation system.

Scope

The scope of this study is limited to some industries which experience large number of industrial injuries or high frequency rates¹ and are significant to the economy of Hong Kong in terms of employments. The author, after a careful study of the relevant statistics, has selected cotton spinning, cotton weaving in the manufacture of textiles; shipbuilding and repairing and shipbreaking in

¹Gagliardo, Domenico. American Social Insurance. (New York: Harper & Brothers Publishers, 1955), p. 344.

The frequency rate expresses the number of injuries over the days on which they occurred, per 1,000,000 man-hours of exposure, or work. These rates are useful in comparing the number of accidents in different industries. The formula is

$$FR = \frac{I \times 1,000,000}{MH}$$

FR = the frequency rate

I = the total number of injuries

MH = the total number of man-hours of exposure

the manufacture of transport equipment for discussion. Results obtained from the small sample can only serve as an explanatory study.

References are made to Great Britain, United States of America, Singapore and Taiwan. The countries selected are either predecessors in this field or of similar economic and social conditions to that of Hong Kong.

Research methodology and limitations of the study

Selection of industries and countries for the study

Because of the complexity of industries in Hong Kong, it is impossible to include all factories in the study. Therefore, industries to be studied are selected according to the two criteria mentioned above, i.e. the number of industrial accidents or frequency rates and the importance to Hong Kong's economy.

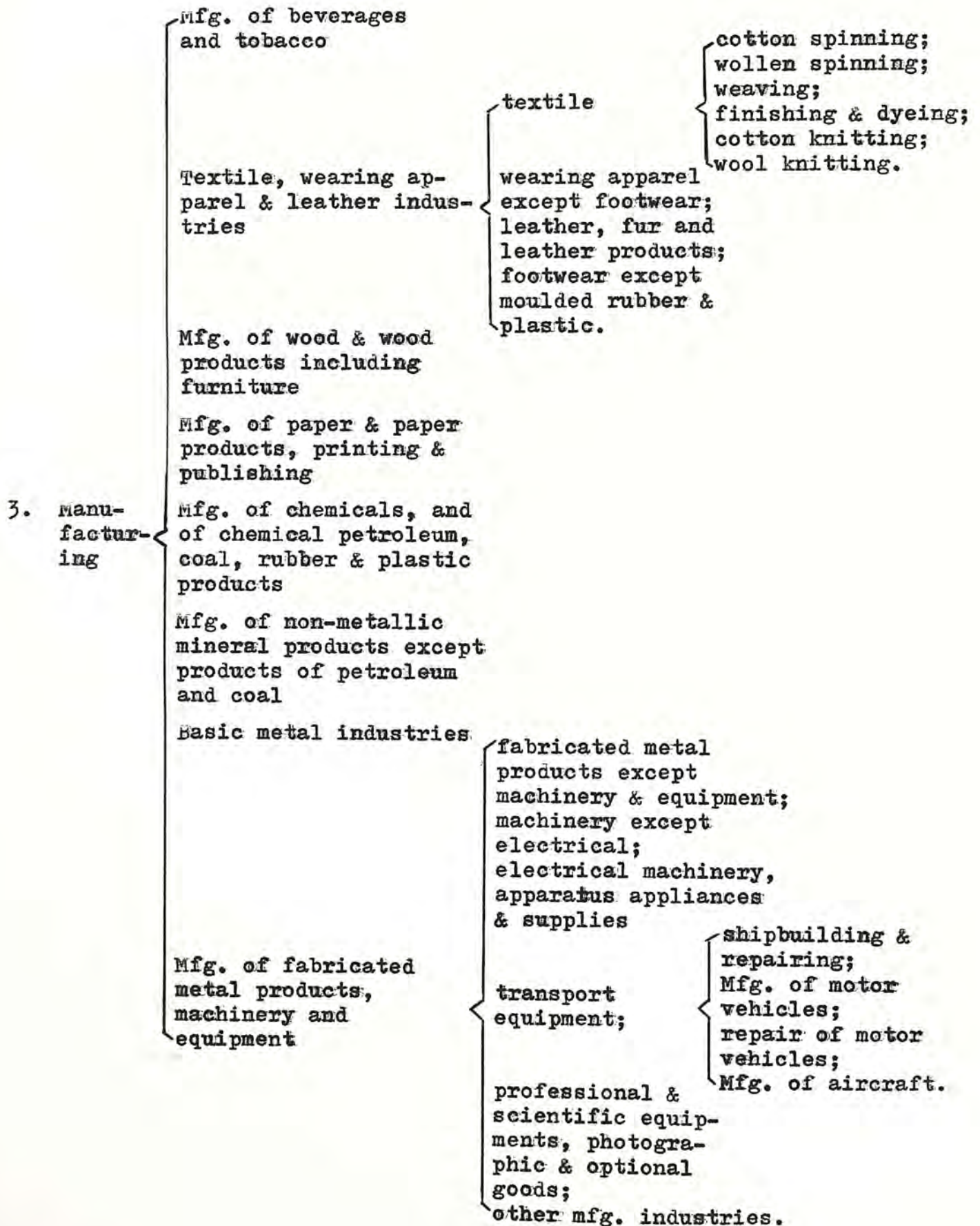
The industries of Hong Kong are classified, according to the United Nations International Standard Industrial Classification, into nine major divisions.¹ Each division is subdivided into several industrial groups. Each industrial group is comprised of several industries. Because of the wide range of products manufactured or processed, each industry is further divided into several branches as shown in the manufacturing division in Chart I-1.

¹Data for division eight are not available.

The classification of industrial establishments is based on the revised list in Rev. 2 of U.N. Statistical Paper M, No. 4 from the first quarter of 1970.

Chart I-1.--The nine classifications of Hong Kong industries

1. Agriculture, forestry & fishing
2. Mining and quarrying



4. Electricity, gas and water
5. Construction
6. Wholesale and retail trade and restaurants and hotel
7. Transport, storage and communication
9. Community, social and personal services

A systematic selection is made according to Chart I-1. Statistical data show that manufacturing division experienced the largest number of industrial injuries and provided employments for over one-third of the total working population. Thus this division is selected for the study.¹

The manufacturing division is sub-divided into nine industrial groups of which the manufacture of fabricated metal products, machinery and equipment experienced the largest number of industrial injuries while textile, wearing apparel and leather industries provided over two-fifths of the total employment in the manufacturing division. These two industrial groups are selected for further considerations.¹

It can be seen from Table I-2 that the manufacture of fabricated metal products, machinery and equipment is comprised of five industries of which the manufacture of fabricated metal products experienced the largest number of industrial injuries; manufacture of electrical machinery, apparatus, appliances and supplies provided the largest employment and manufacture of transport equipment experienced the highest frequency rate. After careful consideration, transport equipment industry is selected from this industrial group.

¹Statistical data are shown in the Appendix.

The manufacture of textile, wearing apparel & leather industries is made up of four industries of which the manufacture of textiles experienced the largest number of industrial injuries and provided the largest employment while the manufacture of footwear, except vulcanized, moulded rubber or plastic footwear, experienced the highest frequency rate.

TABLE I-2.--Industrial & occupational injuries and number of persons employed in textile, wearing apparel & leather industries and fabricated metal products, machinery & equipment in 1970

	In- juries ¹	Em- ployment	Frequen- cy Rate	% of the total em- ployment in the mfg. division
Textile, wearing appa- rel & leather indus- tries				
Manufacture of Textiles	1,891	127,466	6.0	23.2
Wearing apparel	22	110,974	0.07	20.2
Leather & leather products except footwear	20	790	10.0	0.1
Footwear, except vulcanized, moulded rubber or plastic footwear	214	3,888	21.4	0.7
Total	2,147	243,118		44.2
Fabricated metal pro- ducts, machinery & equipment				
Fabricated metal products	1,440	46,673	12.3	8.5
Manufacture of machinery	176	7,454	10.0	1.3
Electrical machinery, apparatus, appli- ances & supplies	332	48,829	2.7	8.9
Transport equipment	785	13,493	24.1	2.4
Professional & scien- tific & measuring & controlling equip- ment, & photogra- phic & other op- tional goods	- ^a	7,155	-	1.3
Total	2,733	123,604		22.4

^aThere is no breakdown figure for this industry.

¹Labor Department. Annual Departmental Report 1969-70. (Hong Kong: Government Printer), p. 164.

After careful consideration, the manufacture of textile and transport equipment are selected for the study. It is not only due to the statistical data, but also to their development. Shipbuilding and repairing in the transport equipment industrial group is the first industry established in Hong Kong and textile immediately followed. Both industries are important to the economy of Hong Kong.

Because of the size of the two industries, it is impossible to include all textile and transport equipment factories, therefore a further break-down is necessary.¹

TABLE I-3.--Persons employed in selected registered or recorded industries in manufacture of textile and transport equipment in 1970²

	Persons Employed
Manufacture of Textile	
Cordage, rope & twine	386(21)
Cotton knitting	8,821(252)
Cotton spinning	21,957(34)
Cotton weaving	29,547(252)
Dyeing & finishing	10,381(290)
Made-up textile goods except wearing apparel	1,936(126)
Woolen spinning	4,416(12)
Woolen knitting	39,186(1,020)
Transport Equipment	
Aircraft repair	2,045(2)
Shipbuilding & repairing	9,803(39)

Number of industrial undertakings in brackets.

¹There are no breakdown data for industrial injuries.

²Hong Kong Government. Hong Kong Annual Report 1970. (Hong Kong: Government Printer), p. 261.

Out of the eight branches in the textile industry, cotton spinning and cotton weaving are selected for the study, while the shipbuilding & repairing branch in the transport equipment industry is selected, too.

In the course of selecting the industries to be studies, there may be bias. Some industries which worth studying may be left out, for example, footwear industry having a high frequency rate; fabricated metal products industry having experienced a large number of injuries and electrical machinery, apparatus, appliances & supplies having a large employment. The method adopted in the selection may not be satisfactory.

The criteria for selecting countries for references are that they should either be predecessors in this field or their economic and social conditions similar to that of Hong Kong.

A new approach to the accident problem was being pioneered in Europe. First in Germany in 1883 and then in Great Britain in 1897, a principle of accident compensation without respect to responsibility was introduced.¹ Hong Kong being a colony of Great Britain, its Workmen's Compensation Ordinance is based on the Colonial Office model produced shortly after the end of the Second World War. Thus, Great Britain is selected for reference.

¹Chamberlain, Neil W. The Labor Sector. (New York: McGraw Hill Book Company, 1965), p. 542.

The U.S. is selected because it is the most advanced country in the world, the system of which is worth studying.

Taiwan and Singapore, having economic and social conditions similar to that of Hong Kong, are also selected for references.

Design of questionnaires¹

The questionnaires are designed to obtain the response from the selected industries towards the amended Ordinance. It is divided into four groups. The first group is designed to obtain information related to the size of the factories under study and the average wage of the workers. The second group is designed to obtain information concerning the usual practice the respondents used in settling claims to compensation. The third group is designed to obtain the opinions of the respondents on certain aspects of workmen's compensation. The last group is designed to obtain their opinions towards the amended legislation.

Selection of the sample

All factories of the selected industries which are found in the Red Book 1969² constitute the sample for this

¹A copy of questionnaires is in the Appendix.

²A comprehensive cross-reference of Hongkong's manufacturers, exporters and products.

survey. There are altogether two hundred and ten factories.

The research methodology

Due to the shortage of time and money, the research was carried out by mailing questionnaires to the respondents. A letter explaining the aim of the survey and a set of questionnaires in both Chinese and English were despatched. In order to secure the co-operation of respondents, the letter stressed that the information obtained would be treated in strict confidence.

Of these questionnaires thirty-seven were undelivered and were replaced. Thirty-one completed questionnaires were received. The response rate is 14.7 per cent. This rate is unsatisfactory. It is due to the nature of the study. Most of the Chinese are reluctant to discuss something concerning injuries or death. Thus the author stresses once more that the study can only serve as an explanatory guideline for future improvement of the system.

Letters were mailed to the Governments or related associations of the selected countries and also to The Federation of Hong Kong cotton weavers, The Hong Kong Weaving Mills Association, the South China Morning Post, Hong Kong Standard, Sing Tao Jih Pao and Wah Kiu Yat Po asking for additional data. Interviews were also carried out with the Labor Relation Division, Industrial Undertakings Unit, Workmen's Compensation unit, Labor Statistics and Surveys unit, Department of Commerce and Industry and

South China Morning Post for relevant information. The author has attended a lecture on Workmen's Compensation arranged by the Hong Kong Management Association.

The secondary data are mainly depended on Government publications which can be obtained from the Government Publications centre, while other data are obtained from the libraries of the University, library of University of Hong Kong and other public libraries including Urban Council Public Library and the Library of Management Association of Hong Kong.

The limitations of the study

There are difficulties in analysing the statistical data. The data are inconsistent and insufficient. The prominent example is that the data in the Annual Departmental Report of Labor Department are for the period April 1, this year to March 31, the following year, while data in the Hong Kong Annual Report are for the period January 1 to December 31.

The author intends to present the materials obtained into three parts. Firstly, he intends to give a general discussion on the development of Workmen's Compensation of Hong Kong. Secondly, he tries to review the present system and find out the attitude of the selected industries and the public. Finally, some suggestions are made to the improvement of the Workmen's Compensation System of Hong Kong.

CHAPTER II

THE DEVELOPMENT OF WORKMEN'S COMPENSATION SYSTEM IN HONG KONG

Interpretation of Terms of Reference¹

Some terms used in the Ordinance may have special meanings and may not be easily understood by the readers. Short explanations are, therefore, required. It is also the author's intention that this paper should be presented in a form which would easily be understood. Terms selected for interpretation are those frequently used in the Ordinance.

The definition of workman is that any person who works under an oral or written contract of service or apprenticeship with an employer in any employment, whether by way of manual labor, clerical work or otherwise.²

According to the Ordinance, the following groups of persons are excluded from the definition of workman and is, therefore, not protected by this Ordinance:

1. All non-manual labor whose average monthly earnings exceed one thousand five hundred dollars;

¹Hong Kong Government. Workmen's Compensation Ordinance, Chapter 282 of the Revised Edition, 1969. (Hong Kong: Government Printer), p. 3, para. 2.

²Reference may also be made to K.W. Wedderburn Cases and Materials on Labor Law. (Great Britain: Cambridge U. Press, 1967), ch.1, p. 30.

2. Those who are employed on a truly casual basis;
3. Outworkers;
4. The member of an employer's family employed by the employer and dwelling in his house;
5. Armed forces.

Workmen's compensation means compensation payable to workmen who are injured as a result of an accident arising out of and in the course of employment.¹

Outworker means a person to whom semi-finished goods are given out to be processed in his own home or premises not under the control of the person who gave out the goods.

Industrial accident may be defined as an unintended occurrence arising out of employment which results in loss of life, or disablement which causes a worker to be absent for more than 3 days from his ordinary work.

The phrase, in the course of employment, basically means that the employee must be in the course of doing something in discharge of his duty to his employer directly or indirectly at a time when he is employed at place where he may reasonably be during that time. This definition implies that the times during which a man is going to work,

¹Compensation is payable even if the workman is negligent or has broken some rules of work or has done against the orders of his employers; as long as what he was doing was for the purpose of the employer's business he is covered, unless what is done is serious wilful misconduct.

or returning from it are not times during which he is employed. This interpretation for the phrase is quite good, but there are always marginal cases. For example, if a delivery messenger was injured on the way back after delivering goods, should this messenger be regarded as injured in the course of employment?¹

Earnings are defined to include:

1. cash wages;
2. the value of any benefit which can be estimated in cash, e.g. food or quarters supplied to the workman as a result of accident he is deprived of them.
3. constant overtime or other special remuneration, whether in the form of bonus, allowance, or otherwise;
4. customary tips;

Occupational diseases are those which are definitely connected with certain occupations and afflict those employed in these occupations and not the general population.

¹Kear, John. This is Law. (Hong Kong: A Hong Kong Radio Publication, 1969), p. 28.

The underlying Principle of Workmen's Compensation

The liability of employers

From the time the relationship of employer and employee has been brought about, they are tied together by virtue of the contract. The employer is liable to damages for bodily injuries to his employees, sustained by them in the course of their work. The bodily injury may be the result of accident or disease. This liability of the employer involves the payment of damages and legal costs of considerable sums.

In Britain, a Royal Commission was set up in 1938 with a view to consider social insurance and workmen's compensation in all its aspects. Sir William Beveridge, the chairman, in his report recommended that the workmen's compensation scheme should remain separated instead of completely absorbed into the rest of the social insurance scheme. It was necessary because employees worked under orders to make the employer a profit. When employment injury and occupational disease are occurred in the course of employment, the employer should have the prime responsibility for supporting the injured victims.

Based on the principle of occupational risk, an employer who creates an organization by initiating certain activities and surrounding himself with workers and machines

is regarded as the ultimate cause of employment injury and is liable for the contingencies covered, whether their occurrence is attributable to his negligence or the worker's and even where there has been no fault at all. Almost every country in the world has adopted legislation establishing the individual liability of the employer, and this achievement has been a great step towards satisfying the aspirations of the workers for greater security.

The duty of employers¹

There are many ways in which an employer may incur liability. It is the duty of an employer to exercise reasonable care for the safety of his workmen and other employees in the course of employment. The duty includes:

1. the safety of the place of work. The duty of an ordinary prudent employer is to make the employee as safe as reasonable care and skill permit. The employer's duty applies equally to the place of work as to any other of the circumstances of employment.

Many places of work are inherently dangerous and the danger cannot be removed; the employer's duty, however, is to take reasonable precautions for the safety of his employees. The employer is not expected to protect his workmen against natural risks when working out of doors in

¹Whitmore, Edward. Employer's Liability Insurance. (London: Sir Isaac Pitman & Sons Ltd.) pp. 56-7.

rough country. Evidence of negligence in connection with the place of work must depend upon the facts of the particular case; a defect so conspicuous as to be dangerous would seem to present no difficulty, but where it is not so conspicuous the consideration is whether the employer ought to have discovered it. This gives rise to the problem of inspection.

The employer's duty of care relates to the place of work, but as it also applies throughout the course of employment, the place of work need not necessarily be the employer's own premises.

2. proper plant, machinery and appliances. Plant denotes all manner of things employed in the course of the work. The employer's duty is to maintain as well as provide proper plant and machinery.

Generally the employer will not be liable unless he knows or ought to have known of any defect or danger. If the employer obtains plant from a reputable supplier or manufacturer he will not be expected to examine the equipment for latent defects, but may rely on the manufacturer.

The employer must adopt any necessary safety measures if the plant or machinery is inherently dangerous in its construction or operation.

One of the clearest cases of liability is failure to remedy a known defect when the employer has received notice of the defect, provided the period between notice and the accident is not unreasonably short.

Generally there is a duty on the employer to inspect and test plant. The frequency and methods to be employed must depend upon the circumstances.

3. the safety of system of work. Probably it is the most important part of an employer's duty towards his employees to provide a proper and safe basic system of working. The employer is responsible for the general organization of the factory. He decides the broad scheme under which the premises, plant and men are put to work. In the setting up and enforcing of the system, due care and skill must be exercised for the safety of the workmen. The employer, of course, cannot regulate every possible means by which a workman may choose to deal with various different incidents arising in the course of a day, but for the general routine, the tasks which have to be done continuously, it is his responsibility to devise a safe system.

4. a selection of competent employees. The importance of the duty to provide competent staff has diminished considerably since the employer has been made liable for the negligence of fellow employees and it is on these grounds that actions will generally be raised. It may occur, however, where perhaps an employee, although skilled, may not have sufficient skill to deal with a situation which the employer should have foreseen.

The employer cannot be made to warrant the competence of his employees; he can only be expected to take reasonable care in their selection.

Recovery of compensation

Steps may be taken to reduce accidents, and experience has shown that many of them are preventable by mechanical safeguards and protection, education and morale and proper organization and management. However there are always a residue of unpreventable accidents.¹ These accidents represent a financial cost to the employer and a financial loss to the employee. The cost to the employer should more properly be charged against goods and services produced along with other expenses of production and incorporated in their prices instead of being borne by the injured employees. The financial loss of the injured employee should be compensated. The recovery of compensation for the financial loss is incurred on the one hand by the dependants of the employee who is killed and on the other hand by the injured employee himself as a result of the suspension of his earnings while he is recovering, and by reason of the temporary or permanent reduction of his earning capacity.

Someone may argue that such financial loss is reflected in higher wages and included in prices. It would be socially desirable to provide for the loss by means of a compensation law rather than by higher wages, because:

¹Riegel, Robert and Miller, Jerome S. Insurance Principles and Practices. (New York: Prentice-Hall, Inc.) 1966, p. 356.

- (1) a few workers carry enough reserve to meet the hazard falling upon when financial loss was involved;
- (2) the income of the average employee is insufficient;
- (3) the employees are indifferent and lack of foresight;
- (4) by providing compensation, and putting the cost upon the employer in a form recognizable as payment for accidents, will force the employer to eliminate or to reduce accidents.¹

Besides, proper medical treatment should be provided. In case of permanent total or partial incapacity, prosthetic appliances and rehabilitation should also be provided. The injured person should also be readjusted in such a way to make him, or his dependants, independent and self-supporting. This is based on the assumption that the public is not interested in making an injured worker as well as he was before, in restoring to him everything he has lost, by way of money damages. This view is supported by two reasons:

- (1) it is practically impossible to determine the economic loss involved;
- (2) to pay the actual losses would break down any system for this will lead to malingering.²

¹Gagliardo, Domenico. American Social Insurance. (New York: Harper & Brothers Publishers), 1955, p. 398.

²Ibid.

There are two ways to recover compensation for the financial loss.¹

1. The saving of the workmen. Their earnings are not high enough to accumulate a sizable saving. Even if they were, it is not fair for them to bear the loss. Since the accident took place in the course of helping to make the employer a profit, it should be the employer's prime responsibility for supporting the injured victim.

2. The purchase of workmen's compensation insurance. It should be for the employer to insure. Thus compensation can be regarded as an operating overhead to be set against profit — the cost of the premiums being reflected in the price of the product. The loss falls not on the unfortunate victim alone but is spread over the whole number of those who benefit from the enterprise in which the accident occurred.

This principle led to the setting up of the Workmen's Compensation scheme in the United Kingdom, which scheme is the model for that introduced in the Colony in 1953.

In short, the underlying principle of workmen's compensation is that whenever a person is killed or injured as a result of an accident arising out of and in the course of his employment, then the employer must pay him or his dependants compensation according to his loss of capacity to earn.

¹Rear, John. This is Law. (A Hong Kong Radio Publication, 1969), p. 27.

Employment and Industrial Accidents in Hong Kong

Employment

As a result of the development of Hong Kong industry, industrial employment is now provided for about one-third of the total working population in Hong Kong and the estimated total working population¹ amounted to 1,558,500 is about one-third of the end-year estimated total population of Hong Kong.

By 1947 Hong Kong had over 900 registered factories employing more than 50,000 people. The number of registered industrial undertakings doubled every five to six years while number of persons employed in this registered industrial undertakings doubled every six to seven years. In other words, in a period of 22 years, the number of registered industrial undertakings has increased 16 times from 972 to nearly 15,000 and the number of persons employed has increased 8 times from more than 50,000 to about 430,000.

¹including small unregistrable establishments.

Year	Number of Registered Industrial Undertakings ¹
1947	972
1952	1,985
1958	3,760
1963	7,467
1969	14,754

Year	Number of Persons Employed in Registered Industrial Undertakings ¹
1947	51,338
1954	106,221
1960	228,929
1967	431,973

manufacturing industry is, by far, the largest employer. Table II-1 gives a clear picture on the increase of persons employed in industrial undertakings since 1947.

TABLE II-1.--Number of employees in registered and recorded industrial undertakings¹

Year	Number of Registered or Recorded Industrial undertakings	Number of Persons Employed in These Industrial Undertakings	Employment in Manufacturing Industry
1947	972	51,338	47,356(961)
1948	1,140	60,598	56,815(1,120)
1949	1,280	64,831	60,205(1,251)
1950	1,533	89,268	81,718(1,478)
1951	1,785	93,644	86,136(1,720)
1952	1,985	92,806	85,322(1,902)
1953	2,129	100,855	92,178(2,038)
1954	2,300	106,221	98,196(2,201)
1955	2,550	118,488	110,574(2,437)
1956	3,141	138,783	128,818(2,944)
1957	3,286	148,030	137,783(3,080)
1958	3,760	167,943	156,556(3,524)
1959	4,851	189,036	177,271(4,541)
1960	5,128	228,929	215,854(4,784)
1961	5,977	229,841	215,914(5,624)
1962	6,541	278,593	255,198(6,178)
1963	7,467	302,234	276,699(7,108)
1964	8,492	353,571	325,286(8,132)
1965	8,492	357,497	329,214(8,137)
1966	9,301	376,711	346,990(8,941)
1967	10,635	431,973	399,918(10,234)
1968	12,279	506,753	430,593(10,836)
1969	14,754	561,563	493,042(12,351)
1970	17,239	589,505	532,012(14,682)

Number of industrial undertakings in brackets.

¹Hong Kong Government. Hong Kong Statistics, 1947-67. (Hong Kong: Government Printer), pp. 56-62.

Hong Kong Government. Hong Kong Annual Reports, 1968-70. (Hong Kong: Government Printer).

importance of manufacturing industry

During the Embryonic Period (1947-1953), the principal sources of employment in Hong Kong are industry, commercial houses connected with the entrepot trade, agriculture, fishing and the internal distributive trades.¹ At the end of this period the number of persons employed in registered industrial undertakings doubled. It was because that more and more of the Colony's large population of some 2½ millions were turning to industry for a living, and that in addition to the registered workshops there were hundreds of small establishments. Since this period, the main factor affecting employment was the continued expansion of local industry.

In the 1950's, over 60 per cent of the employment were provided by six leading industries, namely cotton spinning, cotton weaving, garment making, metal-ware, rubber footwear and shipbuilding and repairing. During the period 1948-1958, increase in employment in these leading industries²

¹No general employment figures are available, nor has it been feasible since the war (till 1956) due to rapid changing conditions and varying population heights. Employment figures are, however, held for all industrial concerns registered with the Labor Department.

²Although shipbuilding and repairing was the first industry establishment and was continued to be important, the employment in the last two decades was constantly around 10,000, while the employment of plastic industry increased quite rapidly.

was about 60 per cent of the total increase in employment in all registered or recorded industrial undertakings. This can be shown as follows:

Increase in Employment 1948-59 in Six Leading Industrial ¹	
	Workers
Garment making	19,712
Metalware	13,242
Cotton spinning	10,860
Cotton weaving	9,390
Plasticware	7,991
Rubber footwear	3,494
Total	64,692

In the last decade, textile industry provided employment for about 40 per cent of the total work forces in industry. Since 1948, the textile industry has expanded rapidly to become the Colony's major industry, the textile industry comprises mainly of cotton and wollen spinning, weaving, finishing and dyeing, cotton and wool knitting.² Cotton spinning and weaving together provided about 50 per cent of employment in the textile industry. This can be illustrated by Table II-2.

¹Hong Kong Government. Hong Kong Annual Report, 1958. (Hong Kong: Government Printer), Ch. 1.

Increase in employment (1948-1958) in all registered industrial undertakings were 107,345.

²Manufacture of weaving apparel, according to United Nations, standard classification, is under the footwear and weaving apparel classification.

TABLE 11-2.--Number of persons employed in textile industry
cotton spinning and cotton weaving, shipbuilding
and repairing¹

Year	Textile Industry	Weaving & Spin- ning Industries	Shipbreaking, Shipbuilding & Repairing
1947	9,328(405)	4,150(112)	14,484(8)
1948	13,347(387)	7,690(162)	11,366(11)
1949	15,575(405)	8,544(167)	8,871(19)
1950	24,818(416)	15,192(150) ^a	9,702(18)
1951	29,409(476)	18,709(170) ^a	8,092(19)
1952	27,394(502)	17,000(167)	9,389(20)
1953	31,019(529)	18,580(168)	9,010(20)
1954	33,299(846)	20,324(171)	6,927(20)
1955	33,714(564)	20,443(165)	7,217(21)
1956	39,237(618)	22,883(166)	9,290(22)
1957	42,330(637)	24,563(169)	9,110(22)
1958	47,100(702)	28,480(204)	9,772(25)
1959	43,474(667)	29,615(201)	9,661(29)
1960	56,059(705)	28,266(231)	11,869(55) ^b
1961	61,006(871)	42,430(292)	10,777(53) ^b
1962	70,205(898)	48,595(294)	11,885(52) ^b
1963	72,094(980)	44,914(297)	9,887(40) ^b
1964	81,524(1,118)	45,462(286)	10,779(46) ^b
1965	86,087(1,137)	48,681(289)	11,155(46) ^b
1966	91,129(1,239)	48,728(282)	11,660(44) ^b
1967	101,455(1,401)	50,823(274)	11,437(37) ^b
1968	106,254(1,464)	53,279(293)	9,979(31)
1969	119,442(1,764)	53,246(299)	9,914(37)
1970	124,871(2,293)	51,504(288)	9,803(39)

Number of establishments in brackets.

^aincluding silk spinning.

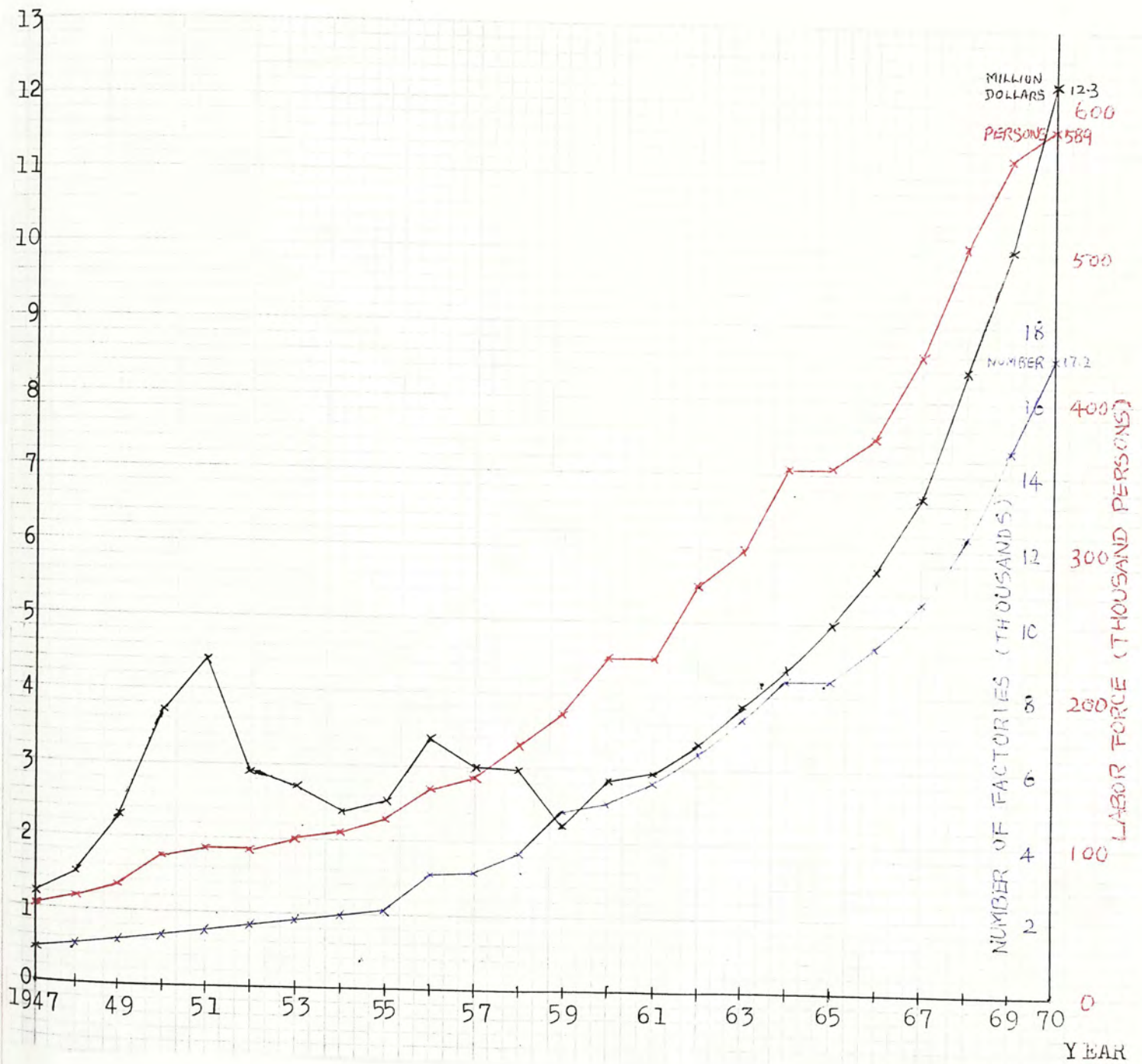
^bincluding ship-breaking.

¹Hong Kong Government. Hong Kong Statistics, 1947-67. (Hong Kong: Government Printer), pp. 56-62.

Hong Kong Government. Hong Kong Annual Reports, 1968-70. (Hong Kong: Government Printer).

Precise quantification of changes in the scope and pattern of manufacturing industry is feasible only with the presence of output statistics. Graph II-1 shows broad trends in manufacturing employment, the number of registered recorded industrial undertakings and output as indicated by export values.

GRAPH II-1.-- Development of manufacturing Industry 1947-70.



Industrial accidents

The number of persons involved in industrial accidents increases rapidly. The increase is largely due to the development of industry. Most of the accidents are caused by machinery, hot or corrosive substances, falls of persons, stepping on, or striking against objects and hand tools. These account for over 85 per cent of the cause of accidents.

An overall view on the trend of industrial accidents can be obtained by referring to Table II-3.

An injured workmen, being prevented from working for three days after an industrial accidents, is entitled for a certain amount of compensation. The increase in accidents leads to an increase in compensation. This can be illustrated by Table II-4.

TABLE II-3.--Industrial and Occupational Accidents, 1949-1970¹

Year	Person Involved	Person involved in Registrable Workplaces	Per Thousand Industrial Workers	
			Accident Rate	Fatality Rate
1949	777(44)	510(22)	5.50	0.246
1950	601(51)	439(23)	4.60	0.235
1951	620(50)	426(25)	4.50	0.269
1952	542(38)	428(15)	4.40	0.155
1953	649(58)	584(15)	5.50	0.141
1954	1,659(89)	1,226(15)	10.60	0.126
1955	2,961(98)	1,683(24)	14.30	0.173
1956	4,504(97)	2,340(33)	15.90	0.224
1957	4,781(86)	2,165(19)	14.10	0.124
1958	5,020(99)	2,806(35)	15.50	0.194
1959	6,138(100)	3,146(26)	14.50	0.120
1960	6,919(122)	3,624(35)	15.40	0.149
1961	8,919(108)	4,693(44)	17.27	0.162
1962	9,115(172)	5,689(80)	19.10	0.268
1963	10,083(165)	6,024(61)	17.00	0.172
1964	9,843(167)	5,426(48)	15.46	0.136
1965	9,914(146)	5,161(30)	14.32	0.083
1966	8,088(156)	4,532(35)	11.47	0.088 ^a
1967	8,723(145)	4,898(24)	11.19	0.055 ^a
1968	9,241(130)	5,285(31)	10.49	0.061 ^a
1969	12,294(184)	7,070(22)	12.97	0.040 ^a
1970	24,610(259)	9,561(39)	16.46	0.069 ^a

Number of deaths in brackets.

^aFigures for 1966-1970 include other occupational accidents

¹Labor Department. Annual Departmental Report. 1949-1970. (Hong kong: Government Printer)

TABLE II-4.--Amount of compensation involved in industrial accidents¹

Year	Compensation (\$)
1950	118,241.35
1951	125,931.07
1952	111,449.82
1953	88,016.03
1954	457,342.79
1955	929,074.32
1956	1,362,317.00
1957	1,177,747.00
1958	1,317,546.00
1959	1,761,258.75
1960	1,419,084.93
1961	1,840,608.10
1962	2,317,919.00
1963	2,403,880.37
1964	2,605,326.72
1965	4,565,943.30
1966	5,447,231.41
1967	5,447,231.41
1968	4,731,403.34
1969	5,296,578.82

¹Ibid.

In Table 11-3, column 2 includes those which occurred in unregistered as well as registered establishments, whereas the figures from which the rate is calculated are those of registered and recorded establishments only. From the Table, it can be realised that persons involved in industrial undertakings increased constantly. But there were two distinguished increase in the number of persons involved in 1954 and 1970 respectively. The rise in the figures in 1954 cannot, however, be considered to indicate the deterioration of safety in industry, but rather attributed to the increased reporting of accidents, which was compulsory under both the Factories and Industrial undertakings Ordinance and the Workmen's Compensation Ordinance and may also be held to be a reflection of the general expansion of industrial activity in the Colony. The increase in 1970, although due in part to the industrial development which continued throughout the year, was mainly the result of extending the coverage to include domestic servants, agricultural workers and non-manual workers whose earnings do not exceed \$1,500 a month. Since the Workmen's Compensation (Amendment) Ordinance, 1970 was in force, 81 cases of accidents were reported concerning domestic servants not included before.

Manufacturing industry comprises about 60 per cent of the accidents reported. Among all industries in manufacturing, textile and shipbuilding and repairing reported most of the accidents. Table 11-5 shows the number of

persons involved in industrial accidents in these two industries.

TABLE II-5.--Industrial and occupational injuries in selected industries¹

Year	Manufacturing Industries	Manufacture of Textile	Manufacture of Transport Equipment
1950	213(1)	84	included in manufacturing industry
1951	212(3)	61(2)	
1952	215(6)	70(2)	
1953	297(6)	76	
1954	799(11)	219	
1955	1,030(14)	297(5)	
1956	1,324(10)	330(1)	
1957	1,615(18)	380(1)	
1958	1,957(23)	429(1)	
1959	2,745(21)	527(1)	
1960	3,089(35)	715	537(11)
1961	3,576(24)	738(2)	656(14)
1962	4,141(85)	856(3)	810(14)
1963	4,528(31)	904(2)	647(12)
1964	4,566(39)	1,001(4)	629(42)
1965	4,104(26)	1,021	578(6)
1966	4,275(24)	1,201(2)	474(6)
1967	4,763(30)	1,461(3)	557(3)
1968	5,614(35)	1,407(4)	506(5)
1969	7,413(48)	1,891(2)	521(8)
			480(11)
			785(19)

Number of deaths in bracket.

¹Ibid.

Workmen's Compensation System Before 1970

In spite of whatever efforts exerted in the direction of increased safety precautions, accidents will still occur and the problem then is to provide a system of compensation for the injured workman so that he and his dependants are not left without adequate means of support. In Hong Kong this system has since 1953 rested on the Workmen's Compensation Ordinance. The development of Workmen's Compensation in Hong Kong is quite slow when compared with that of Britain and the United States.¹

The first workmen's compensation law was passed in September, 1953. The development of the legislation was related to the development of industry in the Colony. The industrialization of Hong Kong took place shortly after the Second World War. As the industrial sector began to expand rapidly, the number of people employed in this sector also increased sharply. At the same time the number of people injured or killed in the course of employment increased. This became a problem. The livelihood of the injured work-

¹In Britain, in 1880, Employer's Liability Act was passed and the first workmen's compensation law was passed in 1897 while in the United States the law was passed by Maryland in 1902.

men and his dependants was affected. This roused the attention of the Government. Legislation was to be introduced for the protection of workmen.

System before the enactment of the first workmen's compensation Ordinance

Before the legislation was passed, injured workmen were not completely overlooked. When the Workmen's Compensation Ordinance was still in draft, some of the employers were voluntarily paying compensation claims broadly in accordance with the provisions of the draft bill. In many cases payment of medical expenses during temporary incapacity had been on a more generous scale than would be legally required.

In short, the system in this period entirely rested on individual and voluntary response of the employer. Workmen did not receive legal protection against injuries as a result of individual accidents.

Voluntary payment showed the need for insurance scheme or alternatively for an employer's fund, particularly in case of the small concerns but the problem of statutory compulsory insurance was not solved even up to now.

The rapid expanding population of the Colony, the presence of refugees, the trade depression and its consequence unemployment hindered the development of workmen's compensation system.

The first Workmen's Compensation Ordinance became effective on December 1, 1953. The enactment of this Ordinance

nance made statutory the rights of workmen to compensation from their employers for personal injuries resulting from accidents arising out of and in the course of employment. Compensation had previously been enforceable only on a voluntary basis.

Coverage provided by the Ordinance

The scope of this Ordinance was limited. Only a small portion of the total working population was included. The Ordinance applied to manual workers who worked for employers in specified employments. These specified ones, listed in the first schedule in the Ordinance, included employment in mining or quarrying, transportation, construction and some other business which were regarded as hazardous.¹ Other non-manual workers whose average earnings did not exceed seven hundred dollars a month were also under the protection of this Ordinance.

The Ordinance did not apply to²:

1. non-manual workers whose average earnings exceed seven hundred dollars a month;
2. Casual workers;
3. Outworkers;

¹Hong Kong Government. Workmen's Compensation Ordinance no. 28 of 1953. (Hong Kong: Government Printer), pp. 24-5, First Schedule.

²*ibid*, p. 2, para. 2.

4. Members of the employer's family dwelling in his house;

5. Domestic servants and agricultural workers; or

6. Armed force.

No compensation was provided for the workman who contracted occupational disease which resulted in total or partial incapacity or the death of the workman due to the nature of his employment.

Amount of compensation

The Ordinance provided compensation of thirty-six month's earnings or ten thousand dollars whichever was less for the dependants of the workman who was dead as a result of an accident arising out of and in the course of employment.

Compensation of forty-eight month's earnings or fourteen thousand dollars whichever was less was provided to the workman in cases of permanent total incapacity and a percentage of this compensation was provided in case of permanent partial incapacity according to the percentage of loss of earning capacity.

A workman who suffered from temporary incapacity received half of the difference between his earnings at the time of accident and those he earned or was able of earning

after the accident.¹

As it is shown, all payments were calculated by reference to earnings. There is no lower limit to compensation. Thus anyone who is employed on unreasonably low wages suffered in the matter of compensation for injury. Some cases were brought before the Court but the speed of settlement was slow due to general lack of experience of the procedures under the new legislation.

Subsequent amendments

Since the Ordinance was in force, several minor changes were made in these years. These changes were made in order to cope with the actual needs which emerged in the development of industry. The following paragraphs show the changes made.

The Ordinance was first amended in 1954. The new legislation was enacted on December 17, 1954. Only minor changes were made. The change which worth mentioning was the rise of maximum compensation for periodical payment in the case of temporary incapacity from 250 dollars to three hundred and fifty dollars a month.²

¹Hong Kong Government. Workmen's Compensation Ordinance 1953. (Hong kong: Government Printer), pp. 7-8 para. 6-9.

²Hong kong Government. Workmen's Compensation (Amendment) No. 50 of 1954. (Hong Kong: Government Printer) p.2.

The application of the Ordinance extended to cover employment in the operation of receiving or transmitting radio signals.

After the Ordinance was put into force for two years, the increase in the number of compensation cases urged the Labor Department to take steps to widen the understanding of the Ordinance. Posters outlining the main provisions of the Ordinance were distributed to factories and other industrial undertakings. It was hoped that the publicity would lead generally to a more widespread familiarity with the Ordinance, and thus to injured workmen taking the initiative in seeking compensation from their employers, when they have been involved in an accident as a result of which compensation was payable. The effort exerted on the publicity of the Ordinance was not very fruitful. A large number of small undertakings ignored the provisions of the Ordinance. Payment, as required by the Ordinance, had been made after action had been taken by the Labor Department.

In these years disagreements and misunderstandings between employers and workmen over compensation payable were often found to have resulted from misinterpretation of the Ordinance and these would be settled within the Department, Fatal cases and those in which agreement could not be reached between the two parties concerned had to be referred to the courts for settlement.

The Workmen's Compensation (Exception of Prisoners) Order was made in January, 1956 to clarify the status of prisoners under the Workmen's Compensation Ordinance 1953. It was not directly related to the general working class.

The Workmen's Compensation (Rules of Court) (Amendment) rules were made in September, 1956 in order to abolish, under the Workmen's Compensation Ordinance, all courts fees relating to workmen's compensation claims, awards and their enforcements. These rules helped to encourage injured workmen in seeking compensation from their employers who ignored the provisions of the Ordinance. In other words, workmen were encouraged to sue their employers for negligence which caused injury to them.

The Workmen's Compensation (Amendment) Ordinance was put into force on March 28, 1958. By this amended Ordinance, the schedule of trades which had previously restricted the application of main Ordinance to workmen engaged in the more hazardous occupations was abolished. The abolition had the effect of bringing within the scope of the Ordinance, with minor exception, all manual labors of whatever income and all non-manual labors whose income do not exceed seven hundred dollars a month.

On the contrary, the Workmen's Compensation (Exception of Agricultural Workers) Order, 1958 excluded from the scope of the Ordinance agricultural workers, aparting from certain groups including those employed by registered com-

panies in keeping of live stock and those who operate or maintain agricultural machinery.

The Workmen's Compensation (Amendment) Ordinance, enacted on June 4, 1964, widened the scope of the principal Ordinance by providing compensation for incapacity or death arising out of occupational diseases were listed in the Second Schedule. Under the new legislation a workman, or his dependants in the case of death was entitled to compensation to the same extent as if the disease was due to the nature of any occupation in which he was employed at any time within the twelve months immediately prior to his incapacity or death. Besides another part — Miscellaneous is added. An employer may not deduct from the earnings of a workman in order to defray the cost of insuring against his liability to pay compensation.

The main change made in the Workmen's Compensation (Amendment) Ordinance which came into effect on May 1, 1965, was to raise the maximum compensation payable for death from ten thousand dollars to eighteen thousand dollars and for total permanent incapacity from fourteen thousand dollars to twenty-four thousand dollars. This increase was due to the rise in living costs and wages.

The Workmen's Compensation (Miscellaneous Amendment) Ordinance 1966 was amended to permit delegation of Commissioner of Labor's power under the Ordinance. It now appeared in its amended form of chapter 282 in the revised laws of Hong Kong. Before this amendment, only the Governor

in Council may make regulations.

The present workmen's compensation system of Hong Kong was formed by the Workmen's Compensation (Amendment) Ordinance 1969. The Amendment is very important. Unlike all previous amendments, it gave a drastic change to the principal Ordinance. The changes made were based on the suggestions given in the report of an inter-departmental working party, 1967¹.

By this amended Ordinance, the coverage extended to cover non-manual workers whose earnings do not exceed one thousand and five hundred dollars a month, domestic servants and agricultural workers. Maximum compensation for death was raised to forty-eight thousand dollars, while in the case of permanent total incapacity sixty thousand dollars. Periodical payments during periods of temporary incapacity were raised from a rate of half to two-thirds the difference between the injured workmen's monthly earnings at the time of the accidents and his monthly earnings after the accident. Such periodical payments were made payable in addition to any lump sums for death or permanent incapacity.

Summary

The workmen's compensation system of Hong Kong

¹On February 14, 1966, an inter-departmental working party was appointed to consider certain aspects of social security in Hong Kong.

rests on the Workmen's Compensation Ordinance Chapter 282 of the Revised Edition 1969. The first Workmen's Compensation Ordinance was enacted in 1953. Since then seven Ordinances were made to amend this principal Ordinance. Besides, a few Order, Rules and Regulations were also made to improve the system. These Amendments were made in order to cope with the rising needs of the working population.

CHAPTER III

THE PRESENT COMPENSATION SYSTEM¹

In the previous chapter, we have discussed the development of workmen's compensation in Hong Kong. Since the principal Workmen's Compensation Ordinance came into force in 1953, several Ordinances were enacted to amend this principal Ordinance. A number of improvements have been made. Each amendment provided either wider coverage or greater benefits to workmen. The last amendment, enacted on November 20, 1969, gave shape to the present workmen's compensation system in Hong Kong. This amendment can be regarded as a milestone in the development of workmen's compensation system in Hong Kong. It gives not only a wider coverage but also greater benefits to workmen who are injured in the course of employment and are incapacitated for more than three days.

This chapter tends to deal with the present system. The first section roughly outlines the present Workmen's Compensation Ordinance. The second section reviews the

¹Hong Kong Government. The Workmen's Compensation Ordinance, ch. 282 of the Revised Edition, 1969. (Hong Kong: Government Printer).

opinions of the public reflected in the leading local daily press. With the data obtained through mail questionnaires, the attitudes of the local industrialists towards the Ordinance is analysed in the last section.

Workmen's Compensation Ordinance Chapter 282

The present system of compensation for injured workmen rests on the Workmen's Compensation Ordinance, chapter 282 of the Revised Edition 1969. The Ordinance makes the employer totally responsible for compensation for suspension or diminution of earnings, whether of a permanent or temporary nature, caused by injury through accident or occupational disease arising out of and in the course of employment.

Application of the Ordinance

The ordinance applies to nearly all manual workers and to non-manual workers whose earnings do not exceed one thousand and five hundred dollars a month. With respect to the 1953 legislation, the coverage is much widened. The principal Ordinance only covered manual workmen whose employment was included in the First Schedule and other workers whose monthly earnings do not exceed seven hundred dollars. The rise in wage rates, since 1953, has taken many workers out of the scope of the Ordinance. These are now brought back in, and the proportion of the workforce to be covered in 1970 will be greater than that covered when the

original legislation was introduced. Besides, certain groups of workers excluded by the 1953 Ordinance have now been brought into benefit, namely, domestic servants, agricultural workers and members of the various local civil defence forces. These are significant improvements.

There is still a portion of workforce not covered by the provisions of the existing Ordinance:

1. All non-manual workmen whose average earnings exceed one thousand and five hundred dollars a month.
2. Those employed on a truly casual basis.
3. Outworkers.
4. The members of an employer's family who lived with him.
5. Armed services.

Compensation for injury

An employer is liable to pay compensation when a workman suffers injury caused by accident arising out of and in the course of his employment.

If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, or that the injury by accidents is deliberately aggravated by the workman, the employer is liable to pay in reduced amount of compensation if the injury results in death or serious incapacity.

In the following cases, the employer is not liable to pay:

1. if the injury is self-inflicted;
2. if the injury does not result in some degree of permanent incapacity or prevent the workmen from earnings full wages at his normal work for more than three days;
3. if the injury is caused by the workman's addiction to drugs or alcohol and does not result in death or serious and permanent incapacity;
4. if the injury is similar to an injury from which the workman has falsely represented to his employer that he was free;

Amount of compensation

Where death results from the injury, the compensation payable amounts to 36 month's earnings, subject to a maximum of \$45,000 and a minimum of \$7,200. The maximum has been raised twice from \$10,000 to \$18,000, then to the present amount. These adjustments were necessary to maintain compensation at a realistic level in relation to the cost of living and wages. Where permanent total incapacity results from the injury, the compensation payable amounts to 48 month's earnings, subject to a maximum of \$60,000 and a minimum of \$9,600. With the same reason as in the compensation in fatal cases, the maximum has been raised from \$14,000 to \$24,000, then the existing amount.

In case an injured workman needs constant attention, a lump sum is required to be paid. If, after two years, cons-

tant attention is still needed, a further lump sum is to be paid as ordered by the court. These payments are subjected to an overall maximum of \$24,000.

Where permanent partial incapacity results from the injury, the amount of compensation is a percentage of the compensation which is payable for permanent total incapacity proportionate to the loss of earnings capacity caused by the injury.

Where temporary incapacity results from the injury, the compensation is periodic payments over the period of temporary incapacity at the rate of two-thirds the difference between the injured workman's monthly earnings at the time of the accident and that after the accident. If an injured workman who has been receiving periodic payments dies or suffers permanent incapacity as a result of the accident, then compensation for the death or permanent incapacity is payable in addition to any periodical payments previously due. Under the principal Ordinance, the previous periodical payments is deductible from the compensation for the death or permanent incapacity and the periodical payment is limited to three hundred and fifty dollars a month.

An employer may stop or reduce periodic payments to an injured workman when the workman who returns to work receives increased earnings. Either party may apply to the court for a review of periodic payments and the court may convert them to a lump sum.

Calculation of earnings¹

Normally monthly earnings of an injured workman are taken as the average of his earnings over the last twelve months. If the employment has not lasted a year then the average monthly earnings over the period worked are taken as the monthly earnings.

If the injured workman is under the age of 18 or employed as an apprentice his monthly earnings are assessed as if he were an adult workman or in the case of an apprentice, a qualified craftsman. In the principal Ordinance, these two points were not put into consideration.

The minimum rate of earnings is regarded as \$100 a month. The old rate of earnings in \$50 only.

The procedures in dealing with a workmen's compensation case

An injured workman, or someone acting on his behalf, is expected to inform the employer of the accident orally or in writing as soon as possible in order to recover compensation from the employer. The employer is presumed to have had notice of an accident if as a result the workman dies on or near the employer's premises or the place where he was working.

The employer must notify the commissioner of Labor within seven days in writing of any accidents resulting in the death of a workman or incapacity of a workman for more than three days, otherwise the employer is liable to a fine.

¹For the definition of earnings, readers may refer to the Interpretation of Chapter II, section 1.

in the principal Ordinance, the employer was required to notify the Commissioner of Labor as soon as practicable after the occurrence of the accidents.

An application for compensation by or on behalf of an injured workman should be made within twelve months of the accident. The Commissioner of Labor, on receiving notice of an accident which is likely to involve compensation, may make a claim on behalf of the workman or his dependants, in case of death.

A workman who has given notice of an accident must normally submit to a free medical examination by a doctor named by his employer when this is offered within seven days of his giving notice. The workman who fails without reasonable cause to attend for medical examination within fifteen days of being required to do so, may lose his right to compensation.

When an injury involves a claim to compensation, the workman and his employer may agree in writing to the amount payable which is not less than that required by the Ordinance. If no written agreement has been made within twenty-one days of an employer's receiving notice of an accident, a workman may apply to the Court to enforce his claim to compensation.

Liability of principals

When a person contracts with another for the purpose of his trade, as principal, may be liable for any claim to compensation arising from an injury to a workman

employed by the contractor. The principal may, however, take action to recover from the contractor any payment which he is required to make.

When a workman is injured in circumstances which create a legal liability in the employer or some person other than the employer, he may take proceedings to recover damages from the employer or the third party as well as claiming compensation against the employer. But in awarding damages the Court would normally deduct the compensation payable, and in case of a third party, order it to pay to the employer.

Occupational diseases

A workman who suffers from an occupational disease is entitled to receive, for injuries arising from the disease, compensation similar to that payable to workers hurt in industrial accidents.

Compulsory insurance

The Ordinance makes provision for the Governor in Council to prescribe employments in which an employer would be required to insure against all liabilities under the Ordinance. This provision may only come into force on a day appointed by the Governor.

In the principal Ordinance there was no such provision. This indicates that there is a tendency to make workmen's compensation insurance compulsory in certain employments in the near future.

Miscellaneous

An employer may not deduct from the earnings of a workman in order to defray the cost of insuring against his liability to pay compensation. The employer also may not terminate the contract of service of a workman who has suffered incapacity in circumstances which entitled him to compensation until the workman has been certified as fit to resume his employment or compensation for permanent incapacity becomes payable.

When an employer who is insured in respect of a liability under the Ordinance to any workman becomes bankrupt, his rights against the insurers are transferred and vested in the workman.

A workman can enter into an agreement with his employer to relinquish his right to compensation under the Ordinance only with the permission of the Commissioner of Labor.

This section only highlights the important points of the Ordinance. It is intended to give the reader a rough idea about the present workmen's compensation Ordinance of Hong Kong and show the changes which have been made since its first enactment.

Response to the Ordinance: from the
public as reported from the local
newspapers

The enactment of the Workmen's Compensation (Amendment) Ordinance 1969 on November 20, 1969 roused the attention of the public. Since the Ordinance applies to both employers and employees who comprise the majority of the total population, it is impossible to obtain opinions of all concerned. The reasonable and feasible way of obtaining the response of the public towards the new law is through newspapers. Very often, the public opinions are reflected in newspapers.

Generally speaking, the new amended legislation which makes a number of improvements is greatly welcomed.

The Acting President of the Chinese Manufacturer's Association, Mr. James Wu, stated: "Since the compensation scheme was first introduced in 1953, there is a case for a review because of changing circumstances, such as wage increases."¹

The Chairman of the Civil Association, Mr. Hilton Cheong-leen stated: "Although it would increase the manufacturing and operational cost in industry, I am convinced this was an 'enlighten' piece of legislation."¹

¹South China Morning Post. October 11, 1969.

The Secretary of the Hong Kong General Chamber of Commerce, Mr. J.B. Kite, said: "The chamber had nothing against the legislation. It may possibly increase premiums but I am sure that a reasonable rate can be reached. It is a good thing to have workers covered."¹

These three unionists expressed their favourable towards the new laws. The new Bill which entitled the workers larger amounts of compensation in the event of injury or death is also highly welcomed by the workers.

Someone expressed that the increased maxima are coupled with amendments designed to eliminate present anomalies and generally to make the scheme more flexible.

The compensation paid or payable for temporary incapacity is no longer to be deductable from the compensation which subsequently becomes payable when the injury turns out to have resulted in death or some form of permanent incapacity. The unfortunate situation which results when the entitlement for temporary incapacity exceed his entitlement for residual permanent incapacity is removed.

Comments

Although the new legislation is widely welcomed both by employers and employees, there are comments on certain aspects. It is also hoped that more publicity

¹Ibid.

should be made concerning this law.

The Chairman of the Hong Kong shipbuilding and Steel Rolling Industries Association, Mr. Hu Hui-chao, said: "No doubt the insurance companies would increase the premium rate, resulting in higher production costs¹." Insurance premiums for workers compensation had raised by a basic 50 per cent after the amended Bill was passed by the Legislative Council.

These costs can be transferred to the consumer by slight increases in the price of the product or service offered by the employer.

Casual workers are excluded from the definition of workmen. When a casual worker is injured in an accident arising out of and in the course of employment, no one is responsible for the compensation. Reasons for this exclusion should be given.

An executive member of the Federation of Hong Kong Industries expressed that the exclusion of casual workers is only the misinterpretation of terms. If someone hires a painter to have his house painted, the painter is a casual worker but is not an employee. There is no employment relationship between this man and the worker. On the other hand, there is employment relationship between the painter and the decoration company which employs him. The decoration company is liable to any compensation if the painter

¹Ibid.

is injured in an accident arising out of and in the course of employment¹. In other words, the casual worker is also covered. In the author's opinion, this is still a problem to those who make a living entirely on casual work.

Members of the employer's family employed by such employer who resides with him is also excluded from the definition of workman. In other words, for example, the son who works for his father, but does not live in the same house will be entitled to compensation, but not the son who, lives together with his father. There is no reason why the head of a family should not be obliged to compensate his injured dependents in those few cases where he seeks not to do so.

Dr. S.Y. Chung expressed that some uncertainty exists in the interpretation of the new subsection (5) of section 5 of the Ordinance. In other words, it is not fair for the employer to response for compensation to his workers who are injured while carrying out first aid, ambulance, or rescue work or in any competition or exercise in connection therewith and without the consent of his employer. This does not agree with the definition of accident arising out of and in the course of employment.

From the point of view of the public, this inclusion is reasonable. People should help each other in spite of personal interest.

¹Sing Tao Jih Pao, March 21, 1971.

Non-manual worker with earnings over \$1,500 are excluded from the definition of workmen. They do not have statutory right to compensation. Compensation may only be recovered, when it is proved that an injury to a workman is caused by negligence or other wrongful act of the employer. This limitation is not practical. Any particular wage ceiling seems impossible to justify logically and it also retains the inflexibility which has given rise to the need for this amended legislation. The rise in wages took a number of workmen out of the protection provided by the Ordinance.¹ Constant review on wage limit is essential to keep the same categories of workmen under the protection of the Ordinance.

The extension to agricultural workers is valuable and necessary. When this is closely examined, it is found appears. Most agricultural workers are either self-employed or work in family units. These are still excluded from the protection of the Ordinance.²

As in the case of wage limit, inflexibility arises in the fixing of a maximum amount of compensation. Increases in the cost of living may further diminish amounts which by any standards are small. They only look large by comparison with what went before but they are considerably smaller than

¹South China Morning Post. November 15, 1969.

²Ibid., November 14, 1969.

the sums which an employee would be likely to recover.

The new amended Ordinance cannot eliminate the built-in injustice. Compensation is calculate in terms of three and four years of earnings, in case of death and permanent total incapacity respectively. The age and future earning capacity are not taken into consideration.¹

The new legislation does nothing on the fact that Government is bearing a large proportion of the cost of industrial accidents. This is against the logic of workmen's compensation scheme which demands that the cost of industrial accidents should really be borne by the employers and their insurers.

The cost which is borne by the Government is the cost of medical treatment and prosthetic appliances. When an accident occurs, the victim is usually sent to Government hospitals where he receives expensive treatment at normal charges according to his financial situation.

The cost of treatment is neither recovered from the employer and, except for treatment received after his compensation has been paid, nor from the employee either.

Mrs. Elsie Elliott, an urban councillor, has criticised that a workman suffered from permanent partial incapacity has to spend a sizable portion of the compensation awarded him by the Court for buying prosthetic appliances. He then becomes a social welfare case.²

¹Ibid., November 15, 1969.

²Ibid., November 20, 1970.

Liability in case of workmen employed by contractors.

Dr. S.Y. Chung pointed out that there was an inconsistency between section 5 and section 24 of this Ordinance and also between the Employment Ordinance which was passed by the Legislative Council in September, 1968, and section 24 of this Ordinance.

In Section 5 of this ordinance, it is stated that if a workman suffered injury by accident arising out of and in the course of his employment, his employer is liable to pay compensation. According to the Employment Ordinance, a contractor who carried out the whole or any part of any work undertaken by a principal is regarded as the employer of the persons engaged by him to do the work. But in section 24 of this Ordinance, even though the contractor may be the person who actually hires the worker, it is the principal who is liable for the payment of compensation in case of injury or death. Although it is true that the principal may take action to recover from the contractor who would have been liable to pay compensation independently of this section, yet the person who actually hires the workers may not be the party who is initially liable. There is thus an inconsistency in these sections of the Ordinance.

This inconsistency is created by the direct copy of Section 6 of the United Kingdom Workmen's Compensation Act, 1925 and that the primary object of section 24 is to prevent an employer from deliberately avoiding liability by contracting with someone else. Dr. Chung expressed that it

is neither good principle nor good practice to adopt or copy sections of legislation of other territories, if they are not consistent with those of our own as their results only in anomalies, as for the attempt to prevent evasion of liability by an employer.

He also pointed out that the existence of subsection 5 of Section 24 makes the protection provided to workmen under this section more seeming than real. In subsection 5, it is stated that this section is only applicable to any case where the accident occurred on, or in, or about premises on which the principal has undertaken to execute the work or which are under his control or management. This gives a leeway for the principal to escape.

Comments and suggestions have been made on this aspect by different prominent individuals of Hong Kong.

Mr. Fung Hon-chu expressed that if all workers are to be offered equal protection, as they should, and their legitimate claims not frustrated, insurance is a must, and should be made compulsory.

Part IV, compulsory insurance of the Ordinance empowers the Governor in Council to impose, when necessary, compulsory insurance on certain employments.

Such a selective process appears to be in conflict with the principles and spirit of Bill which is to give protection to workmen generally, not to any particular groups and occupations.

Reliable sources indicate that there is no immediate

intention of making insurance compulsory and that it is highly improbable that there would ever be a general requirement to that effect. At best certain high risk employments might be made subjected to the compulsory insurance.

Like the Trade Board Ordinance of 1940¹ which has never once been implemented, the compulsory insurance provision looks like being window-dressing only. Government must have some sound reasons for not wanting to make insurance compulsory at the start.

Dr. S.Y. Chung said that families employing domestic servants do not necessarily have the resource to compensate in case of injury, the total losses of their servants. If the family does not have the money, both the family and the servant can suffer greatly because the servant will be without compensation and the family will have to bear all the grave consequences of not being able to meet the liability. It will indeed be a double tragedy.

Dr. Chung suggested that all employers of domestic servants insure against their liabilities.

Furthermore, this comment is supported by legal requirement for motor car owners to insure against third party risks. Employers of domestic servants are no better placed to pay compensation than an individual car owner.

¹Trade Board Ordinance gave the Governor a power to declare minimum wage rates in trades where wages were unreasonably low.

Suggestion — Government as the underwriter

It is suggested that the Government should assume the role of underwriter — as a non-profit making venture, in order to keep the rates as low as possible and thereby prevent the smaller firms taking risks in leaving their workers unprotected merely because they feel they cannot bear the rates charged by commercial insurance companies.

Response to the Ordinance: from the
selected industries as gathered
from sample survey

The industries that the author selected were textile industry and transport equipment industry. Out of these two industries, cotton spinning branch, cotton weaving branch and shipbuilding and repairing branch were chosen for the study. With reference to the Red Book, 1969, two hundred and ten factories in the three branches were selected. Of these thirty-one provided the required data. The information for these factories, based on the data received, is shown in detail in the Appendix and is summarized in the following paragraphs.

General conditions

Over seventy-five per cent of the factories in the sample have a labor force of less than 500. Nearly fifty per cent of the workers have an average monthly income between \$500 and \$750.

Usual practice which the factories used in dealing workmen's compensation

In the past two years, the employers might have dealt with claims for compensation. As far as the sample under the survey is concerned, there are no fatal cases.

Number of workers injured

After the enactment of the new Ordinance, there was an increase of twenty-eight per cent in the number of workers injured.

Parties paying compensation

About fifty per cent of the factories have shifted their liability to insurance company. The pass of the new law did not cause more employers to shift their liability to insurance company.

Forms of compensation paid

Fifty per cent of the compensation was paid in the form of money. The new law caused little change in the forms of compensation.

Amount of compensation paid

A portion of the respondents were reluctant to review the amount of compensation paid. The amount of compensation paid increased after the new Ordinance was put into practice.

The length of time that the injured workers have to wait before receiving compensation

Most factories compensated their injured workers within a shorter period after the amending legislation has been passed.

In section 18 of the new Ordinance, the employer on

whom notice of the accident has been served, should agree in writing with the workman as to the amount of compensation to be paid within twenty-one days after the receipt of the notice.

The opinions of the respondents on certain aspects of workmen's compensation

Proposed length of payment period

From the data obtained, it is calculated that the average reasonable length of period is less than one month.

Proposed forms of compensation other than money

One-fifth of the respondents suggested that medical expenses should be included in the compensation.

Proposed parties paying medical expenses

Four-fifths of the respondents suggested that medical expenses should be borne by the employer. If the employer has shifted his liability to the insurance company, then the insurance company is liable to pay. At present, medical expenses are not recovered from the person who is liable to pay.

Proposed parties paying prosthetic appliances

Two-thirds of the respondents felt that either the employer or the insurance company was liable. About one-third of the respondents felt that the Government was supposed to be liable for the provision of prosthetic appli-

ances as it is the job of the Social Welfare Department.

Government assuming the role of non-profit making underwriter

Over eighty per cent of the respondents wanted Government to assume the role of non-profit making underwriter, so as to reduce their premiums.

Introduction of compulsory insurance scheme

Nearly ninety per cent of the respondents agreed to the introduction of compulsory workmen's compensation scheme.

In section 41 of the new Ordinance, it is stated that provision is made for the Governor in council to prescribe employments in which employers should be required to insure against all liabilities under the Ordinance.

Government's subsidies on premiums if compulsory insurance scheme is introduced

Seventy per cent of the respondents hoped that if compulsory insurance scheme is introduced, the Government has to pay a part of the premiums.

The opinions of the respondents towards the amended Legislation

Over eighty per cent of the respondents agreed that the changes made in the new Ordinance were necessary. In other words, the changes in order to provide wider coverage and great benefits to workers were necessary.

Recommendations

Thirteen out of thirty-one respondents give some opinions on what improvements should be made in the workmen's compensation system of Hong Kong. These opinions are summarized as follows:

1. more improvements are required. A special committee should be appointed to study the problem with a view to introducing improvements in step with industrial and economic developments in Hong Kong. The Government should provide more health and welfare services.

2. Wider coverage and more benefits. One of the respondents suggest that the scope of "in the course of employment" should be extended to protect the employees while they are on the way to the factory and on the way home. Increased benefits and full rate should be paid for the workman who is incapacitated or for the dependants in case of death.

3. Non-profit making underwriter. The Government should establish a Workmen's Compensation Insurance Department to look after compensation.

4. more publicity. More publicity is required to improve the understanding between employers and employees. More efforts should be exerted on industrial safety.

5. Default and defraud. Both default played by employers and defraud played by employees should be prevented.

CHAPTER IV

EVALUATION AND RECOMMENDATION

After a brief review of the past system and a discussion on the present system, the author tries to evaluate the present system with references to some other countries. In the last section, the author will offer some recommendation for improving the workmen's compensation system in Hong Kong.

Evaluation

The evaluation of the present workmen's compensation system comprises two main parts. First of all, the system is evaluated from the view point of local industrialists and local citizens. References are made to the last two sections of the last chapter. Then it is evaluated with references to Great Britain, United States of America, Singapore and Taiwan.

Evaluation from the view point of local industrialists and local citizens

Local industrialists and local citizens, as a whole, accept the present system. This system gives protection to the workmen, but there are rooms for improvements.

A workmen's compensation system should have four main objectives¹:

Firstly, the system should be applicable to anyone who is classified as workman.

It is true that most of the workmen are included. The extension to domestic servants and agricultural workers is a significant step towards this objective. Some of the States in the United States of America still exclude these kinds of workmen. The special social environment of Hong Kong may account for this. In the mind of most people, domestic servants and agricultural workers deserve more assistance, especially in the case of domestic servants. In Hong Kong, the general concept towards domestic servants is unmarried maids of age around thirty, living on their own. They don't have a family in Hong Kong. Whenever there are difficulties, they seek help from their friends who are also domestic servants offering only limited help. Besides, these workers are numerous in Hong Kong and they run some risk of injury in their employment. Thus it is wise to extend the coverage to domestic servants.

Although the coverage is enlarged, yet there are a great many still excluded, for example, those non-manual workmen whose average monthly earnings are more than one

¹A Report by Inter-Department Working Party to Consider Aspects of Social Security. J.T. Wakefield, Chairman, (Hong Kong: Government Printer, 1967), p. 153.

thousand and five hundred dollars. This exclusion is inconsistent with the objective. Any workman who experiences the hardship arising from an industrial accident required assistance. In case of death, his dependents also need help. There is hardly any reason to exclude these persons. The reason for having this wage limit is to exclude those persons who have enough means to protect themselves. In fact, the wage ceiling of one thousand and five hundred dollars is not appropriate for the cost of living rises continuously. The wage ceiling of one thousand and five hundred dollars was first suggested by the Inter-Departmental Working Party¹ in 1967. At that time, a person having an average monthly earning of one thousand and five hundred dollars was quite well-off. Now it is quite different. This can be proved by looking at the consumer price indexes: Annual Averages.² Taking Sept., 63-Aug., 64 as the base, the consumer price index in November, 1967-October, 1968 was 114.0, while that in November, 1969-October, 1970 was 125.0. Thus the wage limit not only excludes those high-paid executives, but also leaves those

¹The work of this working party was to consider certain aspects of social security.

²Census & Statistics Department. Hong Kong Monthly Digest of Statistics. (Hong Kong: Government Printer), October, 1970, p. 4.

who require help whenever an accident occurs. This leaves room for improvements.

The second objective of workmen's compensation system is that it should compensate a workman for a suspension of earnings or a permanent reduction in his earning capacity resulting from an injury arising out of and in the course of his employment. The present system provides compensation in these occasions. The compensation seems to be sizable. But for a workman of 30, having lost his earning capacity totally and permanently, a compensation of sixty thousand dollars is inadequate. The fixing of a maximum amount for compensation is equally inflexible as the earning ceiling. Constant review is required in order to keep pace with rising cost of living.

On the other hand, there are two points worth mentioning.

1. There is no upper limit for periodical payment in case of temporary incapacity.

2. In case the injured workman after a period of temporary incapacity is proved to be suffering from permanent incapacity whether total or partial, or is dead, no periodical or lump sum payments paid or payable shall be deducted from any amount of compensation payable.

These two points are generally appreciated by the public. The injured workman, in this case, receive adequate protection.

The third objective is of similar nature to the

second one. It states that compensation should be given to the dependants of a workman who dies from such injury for the loss of his financial support. At present, the compensation provided to the dependants of the deceased workman is not adequate. A lump sum of forty-eight thousand dollars can only help them temporarily. There must be some way to help them in restoring the income source of the family.

The fixing of minimum amount of compensation is a good device in making sure that compensation for injury is not less than an amount calculated according to the accepted subsistence figure regardless of the fact that actual earnings may be lower than this.

Last but not least, a workmen's compensation system should provide for the medical treatment and rehabilitation of the injured workman. This objective does not exist in the present system. The Ordinance does not make the employer responsible for the cost of medical treatment of a compensable injury, even though he is liable to pay the compensation for any incapacity arising thereof. The cost of treatment falls upon the workman. In practice, industrial injuries are treated in government hospitals where charges are reduced. The injured workman, with this assistance, avoids considerable hardship. In other words, the government medical service is subsidizing the employer, with public funds, for a part of the cost of an industrial accident.

The same consideration applies to the supply and maintenance of artificial limbs and appliances to injured

workmen. No obligation is at present placed upon the employer in these matters and the workman is forced to rely on charity or his own resources for any prosthetic he may require.

With respect to the two points mentioned above, the present system cannot be considered as adequate. Generally speaking, the present system can serve, to a limited extent, as a protection for injured workmen.

Evaluation with references to Great Britain

Now the system is evaluated with references to Great Britain, United States of America, Singapore and Taiwan. In case of Great Britain it is the author's intention to refer first to the principles on which the workmen's compensation system of Great Britain based, then to her present system.

In Great Britain, the workmen's compensation scheme initiated in 1897 was found wanting in many respects by all who were concerned with its administration.¹

Sir William Beveridge, chairman of Royal Commission of 1938 set up the principles on which the present system in the United Kingdom was based. The six principles suggested by him were²:

1. to provide income maintenance during all the inevitable risks of industrial life.

¹V. George. Social Security: Beveridge and After (New York: Humanities Press, 1968), p. 170.

²Young A.F. Social Services in British Industry. (New York: Humanities Press, 1968), pp. 156-59.

To all recognized inevitable risks of industrial life namely, unemployment, sickness, maternity, widowhood, orphanhood, industrial injury and retirement, he added a funeral grant.

2. to see that benefit lasted as long as the contingency.

He was not prepared to sit by and let the contingency continue indefinitely. Positive steps were taken to stop the contingency except in the case of retirement and orphanhood where only time could remedy.

3. that there should be equal benefit for equal need.

This principle, that there should be equal benefit for equal need, was aimed at remedying the injustices and inequalities.

4. that a thorough-going overhaul of the administration should take place.

He had been appalled by the way people in need had been shuttled about from one office to another seeking benefit, and he advised the establishment of large multi-service offices, where all categories of applicants could be dealt with under one roof, not only to establish their claims, but also to receive benefit.

5. comprehensiveness. This meant that instead of selected groups of workers being compulsorily insured, nearly all those over school leaving age became contributors.

6. subsistence. This principle was a very different matter. In Beveridge's opinion benefit should be enough to live on, but no more. Because if it were higher than the minimums, it would counter the British propensity for thrift with advantage to their greater national prosperity, and individual independence. At the same time, to offer benefit that was less than subsistence was to assume that those who had been unable to make private provision and even some who had, would be forced inevitably to seek supplementation, all that would mean inquiry into means, and interfere with personal liberty.

Beveridge's principles, though not accented entirely, became the cue for a spate of legislation. The year 1946 saw the passing of the Industrial Injuries Act which replaced the earliest social benefit, Workmen's Compensation.

Although these principles were suggested three decades ago, it really formed an ideal framework for workmen's compensation system. Taking these principles as reference for evaluating the present workmen's compensation system of Hong Kong seems not very suitable. But by doing so, we can obtain a clear picture of the present system so that necessary changes needed may be visualized.

On close examination of the present workmen's compensation system of Hong Kong and the principles of Beveridge, it is found that:

Firstly, the system does not provide income main-

tenance during all the inevitable risks of industrial life. Obviously, unemployment, widowhood and orphanhood are not under consideration.

Secondly, no positive steps are taken to stop the contingency, and in case of permanently incapacity, and death, the injured workmen or their dependants are compensated by a lump sum. The victims are left to themselves seeking for medical treatment and other help.

Thirdly, the administrative system requires improvement.

Fourthly, the present system only provides protection for selected groups of workers.

On the whole, the evaluation of the present system with reference to the Beveridge principle shows that series of steps have to be taken in improving the present system.

In 1941, the Government appointed the Beveridge committee to survey national schemes of social insurance and allied services, including workmen's compensation. Sir William Beveridge published his report in November 1942. He suggested that workmen's compensation should not be separated from national insurance.¹

In 1944, the Government announced its proposals on social insurance. Part I dealt with social insurance generally

¹"Workmen's Compensation". Encyclopaedia Britannica, 1965. p. 745.

(except for industrial injuries) and Part II with social insurance for a new scheme of industrial injury allowance. The industrial Injuries Act was enacted in 1946. In 1952 and 1954, amending acts were passed to increase the benefits.¹

Under the new scheme benefits were made payable at flat rates, with supplements for family responsibilities. In the earlier weeks, while the workman is incapacitated for work, injury allowances were to be made at uniform rates. Afterwards, if disablement continued, industrial pension were to be based upon the extent to which the workman has suffered disablement by the injury in comparison with a normal healthy person of the same age and sex. The pensions were not affected by any subsequent earnings of the workman and not replaced by lump sum payments. Pensions were also provided for widows, parents and certain other dependants of those who died as the result of industrial injury.¹

The scheme covered broadly all persons working under a contract of service or apprenticeship and applied to personal injury by accident arising out of and in the course of employment, and to specified industrial diseases. It also covered accidents to persons engaged in rescue work and other specified classes of emergency work in connection with industrial undertakings generally.¹

¹Ibid.

The scheme was financed by an industrial injury insurance fund maintained by weekly contributions from employers and workman together with a contributions from the exchequer.¹

In referring to this scheme, it is found that the present system of Hong Kong needs a lot of improvements. The coverage provided by the Ordinance is not wide enough. Benefits are made in lump sum payments instead of pensions. The age of the victim is not taken into consideration.

Evaluation with reference to United States of America

The most striking characteristic of American compensation laws is diversity of provisions. The laws are a product of separate states, and in addition there are acts applying to the District of Columbia, Puerto Rico, and Federal Civil service employees, as well as a separate Federal Longshoremen's and Harbor Worker's Compensation Act. There are actually fifty-four separate legislative measures dealing with industrial accident compensation.² However, it is possible to indicate the major respects in which there is some degree of uniformity.

¹Ibid.

²Chamberlain, Neil W. The Labor Sector: An Introduction to Labor in the American Economy. (New York: McGraw - Hill Book Company, 1965). p. 554.

Compensation laws are broadly divided into two groups, the compulsory and the optional. In 28 states compensation for employees of private industry is compulsory and in 24 states it is optional. In some of the states classified as compulsory, however, the law is applicable only to certain hazardous industries.

In states where the law is optional, the employer loses certain legal defenses and the workman loses certain advantages. It is therefore to the interest of employer and workman to accept the compensation act.¹

It is estimated that 80 per cent of the workers are covered by state workmen's compensation laws. There are extensive variations in different states, but the classes of workers most commonly excluded from coverage are domestic servants, casual labors, agricultural workers and employees of interstate railroads.

The Ordinance of Hong Kong provides a larger coverage than some of the states by putting domestic servants within the scope of protection.

After a waiting period of specified length (about three-quarters of the states require a seven-day period), a worker covered by the system is eligible for cash, medical and rehabilitation benefits following an injury. Many

¹Riegal, Robert, and Miller, Jerome S. Insurance Principles and Practices. (New York: Prentice - Hall Inc., 1966), p. 359.

states, however, provide that if the disability continues beyond a period of time, such as four weeks, payments will also be made for the first seven-day period.

The benefit to be paid in cash is a percentage of the worker's wages. The amount of compensation received in cash is usually two-thirds of the employee's average weekly earnings subjected to maximums and minimums. Most of the states do not limit the amount for medical benefits. In recent years, rehabilitation benefits have been given increasing attention.

The waiting period required by the legislation of Hong Kong is shorter (three days) and after the waiting period, payments will also be made for the first three-day period. This is good in reducing the hardship of the injured workman. On the other hand, no medical and rehabilitation benefits are provided.

In many states, "second injury funds" have been established. If a person who has been injured previously later becomes even more seriously injured, the compensation payments are paid by the state out of the second-injury fund. This obviates the tendency by employers to refuse employment to workers previously injured. There is no such provision in the system of Hong Kong.

Evaluation with reference to Singapore

Singapore has based its workmen's compensation

system on the workmen's compensation Ordinance enacted in 1955. There has been no great advances. The compensation system of Hong Kong provides a larger coverage and more benefits to injured workmen than that of Singapore. For example, non-manual workmen with average monthly earnings more than HK\$800¹ and domestic servants are excluded; the compensation for a workman in case of death is HK\$14,400, and in case of permanent total disablement to adults HK\$19,200.

There is an exception, the Ordinance requires the employer to pay the cost of medical treatment and such medicines as the medical practitioner may prescribe. Besides, artificial limbs and surgical appliances certified by the registered medical practitioner to be necessary are supplied to the injured workman.

Evaluation with reference to Taiwan²

An enactment in 1950 in Taiwan established the foundation for social insurance system which provided from its inception benefits against the risks of employment injury, maternity, old age and death. The programme was com-

¹The author has converted it into Hong Kong dollars.

²A Report by the Inter-Departmental Working Party to Consider Certain Aspects of Social Security. J.T. Wakfield, chairman. (Hong Kong: Government Printer), no. 106-7.

nulsory. It was progressively broadened to cover wider range of workers and was supplemented by special programmes for fishermen, sugar cane workers and civil servants. Under the Labor Insurance Act of 1958, the several previous schemes were combined into a single programme, there is a nation-wide contributory social insurance scheme for practically all employed and self-employed persons which provides the insured with six kinds of benefits, namely maternity, injury, disability, hospitalization (certain diseases and services excepted) old age and death. The rates of benefits for injury disability and death differ according to whether the cause was occupational or otherwise. It is financed by contributions from the insured and their employers and, in the case of self-employed, by the state which also bears the cost of administration. The rate of contribution is at present fixed at four per cent of the insured monthly wage of which the employer pays three quarters and the worker one quarter. The equivalent contribution by a self-employed person is 70 per cent by the individual and the remainder by the state.

The arrangements for injury and disability are more favourable than employment injury compensation in Hong Kong. In Taiwan the insured person is entitled to an occupational injury compensation equal to seventy per cent of his average monthly wage when he sustained the injury or disease. The maximum payment for insured person suffering from permanent disability is 60 months of average monthly wages.

Besides, the insured persons are provided with free medical treatment and hospitalization to a maximum period of seven months.

The experience of Taiwan can be taken as an example for improving the system in Hong Kong.

Recommendation

As the industry of Hong Kong continues to expand, the need for protection against industrial accidents also increases. A better system or scheme should be adopted. In the above discussions, it is found that there are many short-comings in the present system. Thus improvements should be made so as to remedy the shortcomings. Besides, certain aspects of other system may be introduced to Hong Kong.

The introduction of an employment injury insurance scheme would inevitably take time. In the short run, the following changes should be made.

Coverage

The wage limit should be removed. The coverage should be extended to cover those non-manual workers whose average monthly earnings exceed one thousand and five hundred dollars.

Besides, protection should also be given to a workman when he is on the way to the working place and on the way home within a reasonable time span taking a reasonable route.

The term 'casual worker' is not defined clearly. Casual worker should be included, since their earnings are not constant. They work all the time in order to earn a

living. Whenever they suffered from incapacity either permanent or temporary, they are left helpless. There is no reason to exclude them.

Compensation for injury

In the calculation of compensation, the need of the injured workman should be put into consideration. A young workman suffering from permanent total incapacity cannot give financial support to his wife and his two or three years old children and they do not have any earning capacity. Thus he should receive more compensation. In other words, if a workman who is the sole bread-winner of a family loses his earning capability, he should receive greater care.

In order to widen the effect of compensation, periodical payments instead of lump sums should be paid for permanent incapacity and death.

Medical treatment

If an injury gives rise to a liability of an employer to compensate, that the employer should also be responsible for the cost of medical treatment including hospital maintenance up to a certain limit. In case of permanent incapacity, the employer should be made responsible for the supply and maintenance of artificial limbs and appliances to injured workmen. In addition, rehabilitation benefits should also be provided.

There is a good method in attaining this goal. In

hong Kong most of the factories are concentrated in certain districts, for example, Kwun Tong, Tsuen Wan and etc. Government may help the manufacturers in each district to establish district medical centres.¹ The manufacturers will pay for the centres. Each manufacturer will share the cost of the industrial health service. In this way, a well-equipped centre can be set up to look after the workmen in that district.

Compulsory insurance

Workmen's compensation insurance should be made compulsory upon the employer to insure against his liabilities, in spite of the fact that inability to pay is extremely rare. This is not impossible. There was such an occasion which occurred in a resettlement estate in Tsuen Wan last summer. A barber shop owner hired someone to decorate his shop. The contractor started working with two of his employees. The weather was hot, one of the employees tried to turn on the shop-owner's electric fans without asking for permission. As he did so, the fan electrocuted him. His fellow worker, attempting to rescue him, was killed also. Compensation should be paid for these workers. The contractor was unable to pay the compensation. Thus compulsory insurance should be adopted.

¹Wade, Michael.. Personnel Manager's Guide to Employee Benefit. (London: Business Publications Limited, 1967.) p. 70.

In recent years, wages rise rapidly. This causes the increase in production cost. If workmen's compensation insurance is made compulsory, the production cost will rise. In order to adopt this scheme and minimize the cost, the Government should assume the role of a non-profit making underwriter. The result is not only to reduce the burden imposed on the manufacturers but also to make it administratively easier to carry out this scheme.

Employment injury insurance scheme

In the long run, employment injury insurance scheme should be adopted. The scheme practiced in Taiwan can be taken as a blue-print. Of course, changes have to be made so as to fit into the existing environment of Hong Kong.

All manual workers, self-employed workers, and non-manual workers should be covered by the scheme. Compensation should be payable not only to injury arising out of and in the course of employment but also non-occupational injury. The needs of victims of industrial accidents and those of non-industrial accidents are identical. It is unreasonable to discriminate between people whose needs are identical. Compensation should be paid in the form of periodical payments. This is administered by a special institution which takes care of all matters concerning this scheme.

The scheme should be financed by contributions from employers, workmen and the Government.

Industrial safety

On the other hand, positive steps should be taken to prevent industrial accidents. The true cost of an accident far exceeds the simple compensation to the employee. A more reasonable figure might include training costs for replacing the injured worker, increased insurance rates, repairing and replacement costs of damaged material and equipment and lost production time. Thus it is better to adopt safety program beforehand than to remedy afterwards. Safety measures may reduce accidents to a large extent. Prevention is always better than cure. This program not only helps the manufacturer to reduce lost but also provide a safe working condition for workers. Good industrial relations may be maintained and productivity may be increased. In Hong Kong, only a few large factories adopt safety program.

APPENDIX

Appendix I (Chapter 1: Introduction)

TABLE 1.--Occupational and industrial injuries in registered or recorded industrial establishments in major divisions in 1970¹

Major Division Number	Major Divisions	Occupational & Industrial Injuries ²	Frequency Rate
1	Agriculture, foresting & fishing	5	0.025
2	Mining & quarrying	108	8.6
3	Manufacturing	7,413	4.8
4	Public utilities	306	8.2
5	Construction	1,456	6.1
6	Commerce	46	0.07
7	Communication	1,335	5.0
9	Services	1,413	1.4
	Total	12,082	

¹Industrial establishments refer to those which are equipped with power-driven machinery or employ 20 or more manual workers, who are registered with or recorded by the Labor Department.

Registered establishments are those which held certificates issued by the Labor Department, while recorded establishments are those in the course of registration.

²Labor Department. Annual Departmental Report 1969-70. (Hong Kong: Government Printer).

TABLE 2.--Estimated employment in main industrial divisions in 1970¹

Major Division Number	Major Divisions	Estimated Employment ²	Percentage
1	Agriculture, foresting & fishing	81,300	5.0
2	Mining & quarrying	4,670	0.3
3	Manufacturing	613,620	39.5
4	Public utilities	15,210	1.0
5	Construction	96,000	6.2
6	Commerce	259,690	17.0
7	Communication	106,600	7.0
9	Services	375,440	24.0
	Total	1,552,530	100.0

¹Hong Kong Government. Hong Kong Annual Report. (Hong Kong: Government Printer), p.26.

²Including those employment in non-registrable establishments and small concerns.

TABLE 3.--Industrial and occupational injuries in registered or recorded industrial groups of manufacturing division in 1970¹

Industry	Injuries	Frequency Rate
Manufacture of food, beverage & tobacco	528	14.1
Textile, wearing apparel & leather industries	2,147	3.5
Manufacture of wood and wood products, including furniture	183	7.3
Manufacture of paper and paper products, printing & publishing	144	2.3
Manufacture of chemicals, and of chemical, petroleum, coal, rubber & plastic products	991	4.5
Other non-metallic mineral products	72	9.6
Iron and steel basic industries	297	39.6
Manufacture of fabricated metal products, machinery & equipment	2,733	9.0
Other manufacturing industries	318	3.2
Total	7,413	

¹Labor Department. Annual Departmental Report 1969-70. (Hong Kong: Government Printer), p. 164.

TABLE 4.--Number of persons employed in registered or recorded industrial establishment of manufacturing divisions in 1970¹

Industry	Persons Employed	Percentage
Manufacture of food, beverages and tobacco	14,757	2.7
Textile, wearing apparel and leather industries	243,118	44.2
Manufacture of wood and wood pro- ducts, including furniture	9,690	1.8
Manufacture of paper and paper pro- ducts, printing and publishing	24,753	4.5
Manufacture of chemical, and of chemical, petroleum, coal, rubber and plastic products	88,378	16.0
Other non-metallic mineral products	3,216	0.6
Iron and steel basic industries	2,883	0.5
Manufacture of fabricated metal products, machinery & equipment	123,604	22.4
Other manufacturing industries	39,779	7.3
Total	550,178	100.0

¹Hong Kong Government. Hong Kong Annual Report 1970.
(Hong Kong: Government Printer), p. 260.

Appendix II

(Chapter 3: The Present Workmen's Compensation System)

THE LINGNAN INSTITUTE OF BUSINESS ADMINISTRATION
THE CHINESE UNIVERSITY OF HONG KONG
SHATIN, N.T. HONG KONG

Tel. NT-612211
February 26, 1971.

Dear Sir/Sirs,

I am a second-year graduate student of the Lingnan Institute of Business Administration, the Chinese University of Hong Kong. As a part of my graduation requirement, I am to write a thesis this year.

At the present moment, I am conducting a survey on the Workmen's Compensation System of Hong Kong on which my master thesis is based. The topic of my thesis is "Workmen's Compensation — A study of Selected Industries in Hong Kong". The result of the research would help to improve the industrial relations and to suggest adequate protection for the workers so as to stimulate their working spirit and will lead to the increase in productivity. I therefore send you a set of questionnaire for the collection of the relevant information.

I would be grateful if you would complete the questionnaire and return it to me at your early convenience.

If you would like to interview me and to give me further assistance, I would be grateful to visit you in your office any weekday morning except on Tuesday.

Thank you for your consideration to the above requests.

Yours sincerely,

Ng Shu Sing.

Encl.

QUESTIONNAIRE ON WORKMEN'S COMPENSATION

ALL INFORMATION SUPPLIED WILL BE TREATED IN THE STRICTEST CONFIDENCE. PLEASE PLACE A CHECK MARK IN THE APPROPRIATE BOX.

1. Number of workers in your factory.

Below 100

100 - 499

500 - 1000

Over 1000

2. Average monthly income per worker (including allowances).

Below \$500

\$500 - \$750

\$751 - \$1000

\$1001 - \$1250

\$1251 - \$1500

3. Number of worker injured.

In 1969

In 1970

Fatal

Non-fatal

(If no, please go to question number 9).

4. The compensation was paid by:

In 1969

In 1970

The insurance company

The employer

Others

(Please specify)(Please specify)

5. The compensation was paid in the form of:

In 1969

In 1970

Money

Medical care

Others

(Please specify)(Please specify)

6. The total amount of compensation was:

In 1969

In 1970

Fatal

Non-fatal

7. How long did it usually take to pay the compensation?

In 1969

In 1970

Within seven days

Within a fortnight

Within a month

Within a year

More than a year

8. In your opinion, what is the reasonable length of time for the injured worker to receive the compensation?

_____.

9. In your opinion, what other forms of compensation, besides money, should be included:

_____.

10. In your opinion, the medical expenses should be paid by:

The worker

The employer

The insurance company

The Government

11. If artificial limbs or apparatus are required by an injured worker, they should be supplied and maintained by:

The worker

The employer

The insurance company

The Government

12. Do you think that Workmen's Compensation Insurance be operated on a non-profit making basis by a Government-operated institution (instead of private underwriters)?

Yes

No

13. Do you think that compulsory Workmen's Compensation Insurance against employer's liability should be introduced in Hong Kong?

Yes

No

14. If yes, should the Government pay all or a part of the premium?

The total amount

A portion

None

15. Do you think that the following changes made in the Workmen's Compensation (Amendment) Ordinance, 1970 are necessary?

Yes No

- a. Increasing the maximum lump sum payable on death (from \$18,000 to \$45,000) and permanent incapacity (from \$24,000 to \$60,000).
- b. Fixing the minimum lump sums payable on death (\$7,000) and permanent incapacity (49,600).
- c. Raising the level of periodical payments during periods of temporary incapacity (from a rate of half to two-thirds the difference between the injured workmen's monthly earnings at the time of the accident and his monthly earnings after the accident).
- d. Making such periodical payments payable in addition to any lump sums for death or permanent incapacity.
- e. Including domestic servants and agricultural worker.
- f. Including non-manual workers whose earnings do not exceed \$1,500 a month.

16. In your opinion, what improvements should be made in the Ordinance in order to protect the interest of the employer or the employee?

17. Please add other comments which you think are relevant?

Thank you very much for your co-operation.

TABLE 1

DISTRIBUTION OF FACTORIES BY LABOR FORCE

Labor Force	Number of Factories
Below 100	12
100 - 499	12
500 - 1000	2
Over 1000	5
Total	31

TABLE 2

DISTRIBUTION OF FACTORIES BY AVERAGE
MONTHLY INCOME PER WORKER

Average Monthly Income	Number of Factories
Below \$500	12
\$500 - \$750	15
\$751 - \$1000	3
\$1001 - \$1250	-
\$1251 - \$1500	-
Non-response	1
Total	31

TABLE 3

DISTRIBUTION OF FACTORIES BY NUMBER OF
WORKERS INJURED (NON-FATAL) IN 1969

Injured Workers	Number of Factories	Total Number of Workers Injured
0	12	-
1 - 20	10	67
21 - 40	1	28
41 - 60	1	43
61 - 80	-	-
81 - 100	1	82
Over 100	-	-
Non-response	6	-
Total	31	220

TABLE 4

DISTRIBUTION OF FACTORIES BY NUMBER OF
WORKERS INJURED (NON-FATAL) IN 1970

Injured Workers	Number of Factories	Total Number of Workers Injured
0	12	-
1 - 20	12	83
21 - 40	3	95
41 - 60	-	-
61 - 80	-	-
81 - 100	-	-
Over 100	1	104
Non-response	3	-
Total	31	282

TABLE 5

DISTRIBUTION OF FACTORIES BY THE PARTIES
PAYING COMPENSATION IN 1969

Parties Paying Compensation	Number of Factories
The insurance company	10
The employer	9
Others	2
Not applicable ^a	12
Total	33 ^b

TABLE 6

DISTRIBUTION OF FACTORIES BY THE PARTIES
PAYING COMPENSATION IN 1970

Parties Paying Compensation	Number of Factories
The insurance company	11
The employer	10
Others	3
Not applicable ^a	12
Total	36 ^b

^aFactories which did not experience accidents which gave rise to compensation.

^bIn some factories compensation was paid by more than one party.

TABLE 7

DISTRIBUTION OF FACTORIES BY THE FORMS
OF COMPENSATION PAID IN 1969

Forms of Compensation Paid	Number of Factories
Money	18
Medical care	7
Others	-
Not applicable	12
Total	37 ^a

TABLE 8

DISTRIBUTION OF FACTORIES BY THE FORMS
OF COMPENSATION PAID IN 1970

Forms of Compensation Paid	Number of Factories
Money	17
Medical care	8
Others	2
Not applicable	12
Total	39 ^a

^aSome factories make payments in more than one form.

TABLE 9

DISTRIBUTION OF FACTORIES BY THE AMOUNT
OF COMPENSATION PAID IN 1969
(FOR NON-FATAL ONLY)

Amount of Compensation Paid	Number of Factories	Total Amount (\$)
Below \$1,000	1	300.00
\$1,000 - \$5,000	7	21,653.05
Over \$5,000	1	8,819.25
Non-response	10	-
Not applicable	12	-
Total	31	30,771.30

TABLE 10

DISTRIBUTION OF FACTORIES BY THE AMOUNT
OF COMPENSATION PAID IN 1970
(FOR NON-FATAL ONLY)

Amount of Compensation Paid	Number of Factories	Total Amount (\$)
Below \$1,000	3	935.35
\$1,000 - \$5,000	7	14,004.75
Over \$5,000	3	43,771.35
Non-response	6	-
Not applicable	12	-
Total	31	58,711.45

TABLE 11.--Distribution of factories by the length of time that the injured workers have to wait before receiving compensation in 1969

Length of Payment Period	Number of Factories
Within seven days	3
Within a fortnight	3
Within a month	4
Within a year	7
More than a year	-
Non-response	2
Not applicable	12
Total	31

TABLE 12.--Distribution of factories by the length of time that the injured workers have to wait before receiving compensation in 1970

Length of Payment Period	Number of Factories
Within seven days	5
Within a fortnight	4
Within a month	3
Within a year	5
More than a year	-
Non-response	2
Not applicable	12
Total	31

TABLE 13

DISTRIBUTION OF FACTORIES BY THE PROPOSED
LENGTH OF PAYMENT PERIOD

Proposed Length of Payment	Number of Factories
Immediately	1
Within seven days	3
Within a fortnight	5
Within a month	4
Within 2 months	2
Within 6 months	1
Non-response	15
Total	31

TABLE 14

DISTRIBUTION OF FACTORIES BY THE PROPOSED FORMS
OF COMPENSATION OTHER THAN MONEY

Proposed Forms of Compensation	Number of Factories
Medical care	7
Assistance to dependants	3
Mental and material assistance	4
Holidays	2
Continue to hire the injured workers or assist them in getting a suitable job after recovery ^a	4
No other form of compensation is needed	4
Non-response	10
Total	34 ^b

^aAs stated in section 48 of the Ordinance an employer may not terminate the contract of service of a workman who has suffered incapacity in circumstances which entitle him to compensation until the workman has been certified as fit to resume his employment or compensation for permanent incapacity become payable.

^bRespondents give more than one answer.

TABLE 15

DISTRIBUTION OF FACTORIES BY THE PROPOSED PARTIES
PAYING MEDICAL EXPENSES

Proposed Parties Paying Medical Expenses	Number of Factories
The workman	1
The employer	8
The insurance company	20
The Government	5
Non-response	1
Total	35 ^a

^aRespondents give more than one answer.

TABLE 16

DISTRIBUTION OF FACTORIES BY THE PROPOSED PARTIES
PAYING FOR PROSTHETIC APPLIANCES

Proposed Parties Paying for Prosthetic Appliances	Number of Factories
The workman	1
The employer	4
The insurance company	15
The Government	10
Non-response	2
Total	32

TABLE 17

DISTRIBUTION OF FACTORIES BY THEIR ATTITUDES
TOWARDS THE GOVERNMENT ASSUMING THE ROLE
OF NON-PROFIT MAKING UNDERWRITER

Attitudes	Number of Factories
Yes	26
No	4
Non-response	1
Total	31

TABLE 18

DISTRIBUTION OF FACTORIES BY THEIR ATTITUDES
TOWARDS THE INTRODUCTION OF COMPULSORY
INSURANCE SCHEME

Attitudes	Number of Factories
Yes	27
No	2
Non-response	2
Total	31

TABLE 19

DISTRIBUTION OF FACTORIES BY THEIR ATTITUDES TOWARDS
THE GOVERNMENT'S SUBSIDES ON PREMIUMS IF
COMPULSORY INSURANCE SCHEME IS INTRODUCED

Attitudes	Number of Factories
The total amount	4
A portion	18
None	7
Non-response	2
Total	31

TABLE 20(a).--Distribution of factories by their attitudes towards the necessity of increasing the maximum lump sums payable on death and permanent incapacity

Attitudes	Number of Factories
Yes	28
No	2
Non-response	1
Total	31

TABLE 20(b).--Distribution of factories by their attitudes towards the necessity of fixing the minimum lump sums payable on death and permanent incapacity

Attitudes	Number of Factories
Yes	25
No	3
Non-response	3
Total	31

TABLE 20(c).--Distribution of factories by their attitudes towards the necessity of raising the level of periodical payments during periods of temporary incapacity

Attitudes	Number of Factories
Yes	25
No	5
Non-response	1
Total	31

TABLE 20(d).--Distribution of factories by their attitudes towards the necessity of making such periodical payments payable in addition to any lump sums for death or permanent incapacity

Attitudes	Number of Factories
Yes	25
No	5
Non-response	1
Total	31

TABLE 20(e).--Distribution of factories by their attitudes towards the necessity of including domestic servants and agricultural workers

Attitudes	Number of Factories
Yes	25
No	2
Non-response	4
Total	31

TABLE 20(f).-- Distribution of factories by their attitudes towards the necessity of including non-manual workers whose earnings do not exceed \$1,500 a month

Attitudes	Number of Factories
Yes	25
No	4
Non-response	2
Total	31

BIBLIOGRAPHY

GOVERNMENT PUBLICATION

- A Report by the Inter-Department Working Party to Consider Aspects of Social Security. J.T. Wakefield, chairman. Hong Kong: Government Printer, 1967.
- Census and Statistics Department. Hong Kong Statistics 1947-1967. Hong Kong: Government Printer, 1969.
- Census and Statistics Department. Hong Kong Monthly Digest of Statistics. Hong Kong: Government Printer, 1970.
- Government of Singapore. Workmen's Compensation Ordinance Chapter 157. Edition of 1955. Singapore: Government Printing Office, 1956.
- Hong Kong Government. Workmen's Compensation Ordinance No. 28 of 1953. Hong Kong: Government Printer, 1953.
- Hong Kong Government. Workmen's Compensation (Amendment) No. 55 of 1969. Hong Kong: Government Printer, 1969.
- Hong Kong Government. Workmen's Compensation Ordinance, Chapter 282. Revised Edition 1969. Hong Kong: Government Printer, 1969.
- Hong Kong Government. Hong Kong Annual Report 1959-1970. Hong Kong: Government Printer, 1960 to 1971.
- Labor Department of Hong Kong. A Guide to Workmen's Compensation Legislation. Hong Kong: Government Printer, 1970.
- Labor Department of Hong Kong. Annual Department Report, 1949-1970. Hong Kong: Government Printer, 1950-1970.
- Rear, John. This is the Law. Hong Kong: A Hong Kong Radio Publication, 1969.

BOOKS

- Coopa, Mansfield, and Wood, John C. Outline of Industrial Law. 4th ed. London: Butterworths & Company, 1962.
- Chamberlain, Neil W. The Labor Sector: An Introduction to Labor in the American Economy. New York: McGraw-Hill Book Company, 1965.
- Cheit, Earl Frank, 1926. Can Injured Workers Recover? Berkeley: Institute of Industrial Relations, University of California, 1963.
- Cheit, Earl Frank, 1926. Medical Care Under Workmen's Compensation. Washington, D.C.: Government Printing Office, 1962.
- Chung, Chi Yung. A Study of Social Legislation. Hong Kong: Holos Press, 1963.
- Creber, Frederick L. Safety for Industry. London: The Queen Anne Press Ltd., 1967.
- Fridman, G.H.L. The Modern Law of Employment. London: Stevens & Sons, 1963.
- Cagliardo, Domenico. American Social Insurance. New York: Harper Brothers Publication, 1955.
- George, V. Social Security: Beveridge and After. New York: Humanities Press, 1968.
- Jenks, C. Wilfred. Human Rights & International Labor Standard. London: The London Institute of World Affairs, Stevens & Sons Limited, 1960.
- Magee, John H., and Bickelhaupt, David L. General Insurance. 7th ed. Illinois: Richard D. Irwin, Inc., 1964.
- McBride, Earl Duwain, 1892. Disability Evaluation and Principles of Treatment of Compensable Injuries. 6th ed. London: Sir Issac Pitman & Sons Ltd., 1963.
- Mehr, Robert I. and Cammack, Emerson. Principles of Insurance. Illinois: Richard D. Irwin Inc., 1961.

- Munkman, John. Employer's Liability at Common Law. 6th ed.
Great Britain: The Thanet Press, 1966.
- Packman, R. A Guide to industrial Safety and Health.
London: Longmans, Green & Co. Ltd, 1968.
- Richardson, J. Henny. An Introduction to the Study of
Industrial Relations. London: George Allen &
Unwin Ltd., 1965.
- Riegal, Robert and Miller, Jerome S. Insurance Principles
and Practices. New York: Prentice-Hall Inc., 1966.
- Simonds, Rollin H., and Grimaldi, John V. Safety Management.
Revised edition. Illinois: Richard D. Irwin, Inc.,
Homewood, 1963.
- Wade, Michael. Personnel Manager's Guide to Employed Bene-
fits. London: Business Publications Limited, 1967.
- Wedderburn, K.W. Cases and Materials on Labor Law. London:
Cambridge University Press, 1967.
- Wedderburn, K.W. The Worker and the Law. Great Britain:
Bristol Typestling Co. Ltd., 1966.
- Whitmore, Edward. Employer's Liability Insurance. London:
Sir Isaac Pitman & Sons Ltd., 1962.
- Young, A.F. Social Services in Britain Industry. New York:
Humanities Press, 1968.

臺灣勞工保險局。 勞工保險申請須知。臺灣：勞工保險局
編印，1970。

劉志宏。 勞工問題及勞資關係論 (第二版)。臺灣：
國立編譯館，1964。

陳國鈞。 勞工問題 (第三版)。臺灣：三民書局有限公司
出版，1968。

JOURNALS

Berkowits, Monroe, and Burton, Jr. John F. "The Income Maintenance Objective in Workmen's Compensation." Industrial and Labor Relations Review, Vol. XXIV. No. 1 (October, 1970).

China Mail. October 10-14, December 30, 1969.
January 9, September 12, 1970.

"Hong Kong - A Survey by the Economists." The Economist. Vol. 229. No. 6530 (October 19, 1968).

McGan, Drescher Nuala. "The Workmen's Compensation and Pension Proposal in the Brewing Industry, 1910-1912: A Case Study in Conflicting Self-interest." Industrial and Labor Relations Review, Vol. XXIV No. 1 (Oct., 1970).

"Safety Last" Business Management. Vol. XXXVIII. No. 5. (Aug., 1970).

South China Morning Post. October 11-28, November 6-20, December 31, 1969, January 2-November 3, 1970.

"The Industrial Sector" Annual Report of Federation of Hong Kong Industries, 1969.

"The Special Treatment of Employment Injury in Social Security" International Labor Review. Vol. 102. No. 2. (Aug., 1970).

MISCELLANEOUS

Curson, C. Compensation for Accidents at Work: A Critical Examination. Report of British Safety Council to members.. London, April 1970. London: Clifford Forest Ltd., 1970.

"Social Security". Encyclopaedia Americana. 1964. Vol. 25.

"Workmen's Compensation". Encyclopaedia Britannica. 1965. Vol. 23.

勞工賠償——香港三類工業之調查研究

吳樹聲

一. 概說

勞工賠償制度的發展與工業發展有密切的關係。自第二次世界大戰後，香港漸趨工業化。最先訂立的勞工賠償法例於一九五三年實施。隨着工業的擴展，勞工人數較前大量增加，故勞工意外涉及更多的工人。法例經過多次的修訂，以適應工業發展過程中所產生的新需求。在一九六九年末，勞工賠償法例作一次較大的修訂，使更多的僱員

獲得該法例的保障，而受傷的工人獲得較多的賠償。

作者撰寫此文的目的是先根據本港幾類工業的僱主對香港勞工賠償制度的意見，對該制度作一簡單的探討。然後參酌若干先進國家的制度，提供一些意見，作為改善現行制度的參攷。

二. 現行賠償制度

現在香港的勞工賠償制度是根據一九六九年勞工賠償（修訂）法例。這項法例就勞工意外事件及職業病所引致的死傷，明確規定工人權利及僱主的義務。該法例適用於

工業工人及學徒；家庭傭工；農業工人；及月薪不超過一千五百元的非體力工作之僱員。但不適用於月薪超過一千五百元的非體力工作之僱員；臨時工人；外工；以及僱主家屬而與僱主同住者。

工人於工作中受傷，僱主有給予該工人賠償的義務。工人因傷死亡時，如遺下任何家屬而該家屬又係完全依賴其收入為生者，賠償款額應為其生時三十六個月的收入總額，但最多不超過四萬五千元，最少不低於七千二百元。工人因傷而致永久完全喪失工作能力，賠償款額應為其四十八個月收入的總數，但最多不超過六萬元，最少不低於

九千六百元。倘若工人受傷達到不能自行照料其日常起居的程度，法庭得判令僱主另外給予一次補償或按期支付照料該工人費用之款項。倘若此種情形超過兩年，法庭得判令僱主再給予該工人一次補償，款項由法庭斟酌情形決定。不過這種補償費用，總數最多以二萬四千元為限。工人因傷而致永久局部喪失工作能力，賠償款額視損失程度而參照永久完全殘廢之賠償數額按比例定奪。工人因工作受傷暫時不能工作之期間可按期領款，其款額應為該工人遭遇意外時每月收入的三分之二。如受傷工人於按期領款期內不治逝世或斷定已屬永久性殘廢，則僱主另給予死亡或

永久殘廢賠償，按期支付之款項不得由賠償款項中扣除。

如工人因傷不能工作超過二十四個月，則作為永久殘廢論，並得參照關於永久殘廢賠償的規定，估定其殘廢程度及賠償數額。

三、對三類工業的調查

作者曾以棉紡織業，造船業及拆船業為研究對象，作一調查。調查結果顯示此等工業對現行勞工賠償法例普遍表示滿意，惟希望加以若干改善。一般意見認為政府應設之一特別委員會，提供各項新措施以應因工業發展過程中

所產生的需求，給予勞工更大的保障及受傷工人更多的利益；政府應設立一勞工保險局，處理一切有關賠償問題；最後，應多著重改善勞資關係及工業安全的工作。

由調查結果所得，証明香港勞工賠償法例需要改善。作者希望參照英國，美國，星加坡及台灣的制度，以提供一些有助於改善現行制度的意見。

四. 其他國家的制度比較

英國在一九四四年實施社會保險，第一部份是有關普通社會保險，第二部份是有關工業受傷津貼。勞工受傷法

例於一九四六年實施。根據此項法例，工人在受傷初期，可得一定數額的受傷津貼，如經過若干時間尚未痊愈，則該工人可得工業恩給金，其數額依照該工人之年齡與性別而有所不同。工人因傷死亡時，其家屬可獲賠償。該項法例幾已保障所有受僱人員及學徒。一切賠償均由工業受傷保險基金支付，該基金每星期由僱主、僱員及政府繳付。

美國賠償法例十分繁複，但大致上可分為強制與非強制兩類。採用強制賠償法例者有二十六個州，其中若干州政府規定此項法例只適用於某些具有危險性的工業。另二十四個州則採用非強制賠償法例。

通常，在意外事件發生後，如工人局部喪失工作能力七天以上，該工人即可獲得賠償，其中包括現金、醫藥及更生設備（如義肢）。現金賠償額為工人每週平均收入的三分之二。有最高與最低賠償額的限制。大多數州政府對於醫藥的賠償數額沒有限制。更生設備的賠償已日漸被重視。不少州政府並設立「第二受傷基金」，對於再度受傷工人給予一切賠償。此一基金之目的在消除僱主拒絕僱用曾經受傷的工人。

星加坡的勞工賠償制度係基於一九五五年所通過之勞工賠償法例，其中值得香港借鏡的是醫藥與更生設備的賠

價。法例規定雇主需支付受傷工人的醫藥費用及供給必需的更生設備。

一九五零年，台灣訂立賠償法例，此為該地社會保險制度的基石。這一制度是強制性的，包括受傷、生育、老年及死亡四種保險。該項賠償法例經過多次的修訂後，於一九五八年成為一個全國性的社會保險計劃，差不多包括所有僱員及自僱者。

五. 若干建議

從以上各國所實施的制度，可以看到香港現行的制度

有很多缺點。若要將全部缺點消除，或實施勞工受傷保險制度，需時甚久。在短期內，似可作如下的修訂：擴大勞工賠償法例，使非體力僱員而收入超過一千五百元者以及臨時工人均可獲得保障；受傷工人應同時獲得醫藥賠償及更生設備的供給；在各工業衛星城市設立工業健康中心，以照顧該地區的工人；勞工保險應為強制性；政府應負擔非牟利保險公司的任務。

就長期言，香港應實施勞工受傷保險制度。在這方面，台灣現行制度似可作為藍本，所有勞工、自僱者及非工業意外的受害者均應受保障及賠償。應設立一特別機構，

負責一切有關該計劃的事宜；至該計劃的費用，可由僱主、僱員及政府分擔。

另一方面，應積極採取預防措施，以防止工業意外的發生，因為預防勝於治療。一次意外的真正損失，不僅是付給工人的賠償費，而且包括訓練新工人以替代受傷工人的費、修理費用、保險費的增加、以及生產時間的損失。安全措施實可大大減少意外的發生。其結果不祇減少僱主的損失，而且可使工人在安全環境下工作。此外，更能改善勞資關係與提高生產力。可惜的是，目前香港只有幾家大工廠實施安全措施。



001015410